

DEPARTMENT OF AGRICULTURE**Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency****7 CFR Part 1940****RIN 0575-AB98****Environmental Policies and Procedures**

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS) and the Rural Business-Cooperative Service (RBS) jointly propose to replace their current environmental regulation with a new environmental regulation, to implement the National Environmental Policy Act (NEPA), to comply with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, and to implement other environmental statutes and Executive Orders. This action is taken to improve both the efficiency and the effectiveness of the environmental review process for RHS and RBS, and to update that process, by reflecting the changes to agency programs and to the environmental laws, Executive Orders, and regulations applicable to those programs. This action represents an important contribution to the USDA's efforts to streamline its operations and realize more efficient use of staff time. Hereinafter, RHS and RBS are collectively referred to as the "Agency."

DATES: Written comments on this proposed rule must be received on or before November 13, 2000. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 13, 2000.

ADDRESSES: Submit written comments via the U.S. Postal Service, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Richard Gartman, Rural Development, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742. Submit written comments via Federal Express Mail, in duplicate, to the Regulations and Paperwork Management Branch, Attention: Richard Gartman, USDA-

Rural Development, 3rd Floor, 300 E. St., SW., Washington, DC 20546. Also, comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "Environmental" in the subject line. All comments will be available for public inspection during regular work hours at the 300 E. St., SW. address listed above.

FOR FURTHER INFORMATION CONTACT:

Susan Wieferich, Senior Environmental Protection Specialist, Technical Support Branch, Program Support Staff, Rural Housing Service, USDA, STOP 0761, 1400 Independence Ave. SW., Washington, D.C. 20250-0761, telephone (202) 720-9647.

SUPPLEMENTARY INFORMATION:**Classification**

This proposed rule has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance programs impacted by this action are as follows:

- 10.350—Technical Assistance to Cooperatives
- 10.405—Farm Labor Housing Loans and Grants
- 10.410—Very Low to Moderate Income Housing Loans
- 10.411—Rural Housing Site Loans and Self-Help Housing Land Development Loans
- 10.415—Rural Rental Housing Loans
- 10.417—Very Low-Income Housing Repair Loans and Grants
- 10.420—Rural Self-Help Housing Technical Assistance
- 10.427—Rural Rental Assistance Payments
- 10.433—Rural Housing Preservation Grants
- 10.438—Section 538 Rural Rental Housing Guaranteed Loans
- 10.441—Technical and Supervisory Assistance Grants
- 10.442—Housing Application Packaging Grants
- 10.766—Community Facilities Loans and Grants
- 10.767—Intermediary Relending Program
- 10.768—Business and Industry Loans
- 10.769—Rural Development Grants (RBEG) (TDG)
- 10.771—Rural Cooperative Development Grants (RTDG)
- 10.772—Empowerment Zones Program
- 10.773—Rural Business Opportunity Grants
- 10.854—Rural Economic Development Loans and Grants

Intergovernmental Consultation

Programs with Catalog of Federal Domestic Assistance numbers 10.405, 10.411, 10.415, 10.420, 10.427, 10.433, 10.438, 10.441, 10.442, 10.766, 10.767, 10.768, 10.769, 10.771, 10.773, and

10.854 are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs with Catalog of Federal Domestic Assistance numbers 10.350, 10.410, 10.417, and 10.772 are excluded from the scope of Executive Order 12372.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically provided in the rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

National Environmental Policy Act

The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, (42 U.S.C. 4321 *et seq.*) neither an Environmental Impact Statement nor an environmental assessment is required.

Environmental Justice

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly,

more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Partnership for Reinventing Government

This regulatory action is being taken as part of the National Partnership for Reinventing Government program to eliminate unnecessary regulations and improve those that remain in force.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is a significant regulatory action within the meaning of Executive Order 12866. This proposal is a cooperative effort between the Rural Housing Service and the Rural Business-Cooperative Service to improve Agency regulations, make more efficient use of Agency staff time, and improve delivery of Agency programs to the public.

We anticipate the economic impact of this proposed rule to be minimal since the costs associated with this rule are attributable to the existing environmental laws and Executive Orders the rule implements. This rule does not alter or impact the funding levels of Agency programs. This proposed rule is a means to simplify and reorganize the existing Agency environmental regulation. The proposed rule is designed to provide the Agency and Agency applicants with clear, precise directions for environmental compliance. The NEPA process has been streamlined without a sacrifice of environmental compliance. Environmental statutes and Executive Orders, which have been signed in to law or amended since the last update of the current regulation (1988), are incorporated into this rulemaking. Guidance is established on environmental risk management and the performance of due diligence in conjunction with the management of hazardous substances.

Regulatory Flexibility Act Certification

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires agencies to analyze regulatory options when the rule would have a significant economic impact on a substantial number of small entities. The undersigned has determined and certified by signature of this document that this rule will not

have a significant economic impact on a substantial number of small entities. Applications for financial assistance under Agency programs are discretionary, therefore, regulatory requirements apply only to those entities which choose to apply for financial assistance.

Executive Order 13132, Federalism

This proposal has been reviewed for compliance with Executive Order 13132 on Federalism, and it has been determined that the regulation has no federalism implications, does not impose substantial direct compliance costs on State and local governments, and does not preempt State law.

Discussion of the Proposed Rule

The environmental regulation currently utilized by RHS and RBS (7 CFR part 1940, subpart G) was first published by the Farmers Home Administration (FmHA) on January 30, 1984. It has been updated once, on September 19, 1988. As part of the USDA reorganization effort, FmHA ceased to exist on October 20, 1994. RHS and RBS are successor agencies to FmHA. The current rule implements the requirements of NEPA, CEQ's regulations for implementing NEPA, and several other environmental laws, regulations, and Executive Orders.

This proposed rule, 7 CFR part 1940, subpart S, will replace 7 CFR part 1940, subpart G, for RHS and RBS. It represents an important contribution to USDA's efforts to streamline its operations, thereby realizing more efficient use of staff time and improving customer service. Procedures are simplified. Readability is improved. The regulation's subject matter is expanded to encompass new and changed environmental laws, regulations, and Executive Orders, including guidance on the management of hazardous substances. This proposed rule provides rules applicable to applicants and their business transactions with the Agency. Detailed procedures and instructions which affect Agency personnel and internal practice will be in an Agency field manual which will be available in each Agency office. Conforming changes to 7 CFR part 1940, subpart G, and other regulations will be included in the final rule.

In 1994, a year-long, broad-ranging task force investigated options for improving both the efficiency and the effectiveness of the process resulting in numerous ideas, many of which have been incorporated into this proposed rule. The Agency is aware that its efforts to "streamline" the environmental review process might be construed as an

attempt on its part to weaken the process, therefore, a conscious effort has been made to ensure that the environmental review process remains sound and effective. In fact, in some respects, such as the area of public involvement, the review process will actually be strengthened.

Highlights of the major changes in this proposed rule are:

1. Based on fifteen years experience dealing with the current regulations, the full range of Agency actions has been examined for possible reclassification. As a result, environmental action thresholds have been raised in certain instances. This proposed rule has more categorical exclusions and Class I actions, and fewer Class II actions, than the current environmental regulation. Both Class I and Class II actions require an environmental assessment. However, a Class I assessment requires less documentation than a Class II assessment. The Class I assessment is a combination checklist and narrative statement; the Class II assessment is a fully narrative statement. Reclassification will reduce paperwork and conserve the time spent by Agency staff preparing environmental assessments by allowing the staff to focus on the environmental issues that are most important.

2. The public notice process has been reinforced and simplified when a Class I or Class II environmental assessment is involved. Previously, the Agency has been criticized for notice procedures which some have characterized as insufficient or not providing for adequate or timely public involvement. This proposed rule requires a notice be published stating that the draft environmental assessment is available for public review and comment. The public comment period for this notice is 21 calendar days for a Class I assessment and 30 calendar days for a Class II assessment. At the end of this comment period, if no substantive changes are made to the assessment as a result of comments received, a Finding of No Significant Impact (FONSI) will be published, without a public comment period, and the assessment is complete. If substantive changes are made to the assessment as a result of comments received, the notice of availability of the draft assessment will be republished with a 15 calendar day comment period to allow time for public review and comment on the changes. Assuming no further substantive changes are necessary, this republication will be followed by publication of the FONSI, without a public comment period, and the assessment is complete. This process facilitates the preparation of

good draft assessments and provides the public with adequate information about the proposed action and sufficient time for comment if it so desires.

This new public notice process also means that actions which are normally categorically excluded, but require an environmental assessment due to some special aspect of the specific proposal in question, will require public notice. The only exception to this public notice requirement are certain actions listed as categorical exclusions involving single family housing, which the Agency has determined would unduly burden the applicant and be environmentally de minimus.

3. There are unique environmental policies and procedures, specific to certain Agency programs and activities, which are currently scattered in various loan making and loan servicing regulations. These unique environmental requirements are updated and relocated to the new proposed rule for easier reference and implementation. This consolidation includes environmental procedures applicable to intermediary or third-party type loan and grant programs, as well as the environmental requirements applicable to acquisition, management, and disposition of real property owned by the Agency.

4. The proposed rule addresses a wide range of unmet needs. Direction is provided on new or amended environmental statutes and Executive Orders, including, but not limited to, the Native American Graves and Repatriation Act of 1990, the amendments to the National Historic Preservation Act of 1992, and the 1994 Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations." Clarification is provided in numerous areas, including, definitions, applicant responsibilities, the classification process, the timing of the NEPA review process relative to loan making and loan servicing decision points, and amendments to and adoption of existing assessments.

5. This proposed rule establishes an environmental risk management program for incorporation into Agency lending practices, and regulates issues relating to the release of hazardous substances or petroleum products, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), and related statutes.

6. This rule prescribes requirements concerning lead-based paint on

residential and nonresidential structures proposed for financial assistance.

7. This rule prescribes requirements concerning indoor air pollutants.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements contained in this proposed regulation.

Title: Environmental Policies and Procedures.

Type of Request: New Information Collection.

Abstract: The National Environmental Policy Act requires Federal agencies to consider the potential environmental impacts of actions proposed for Agency financial assistance. To comply with the Act, it is necessary for the Agency to have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out by the applicant at the site; any air, liquid, and solid wastes to be produced by these activities, etc.) The applicant is the only logical source for much of this information. In fact, a majority of Federal agencies which assist non-Federal applicants in sponsoring projects require these applicants to submit environmental data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.95 hours per response.

Respondents: Individuals; State, local and tribal governments; businesses; and non-profit institutions.

Estimated Number of Respondents: 1201.

Estimated Number of Responses per Respondent: 3.48.

Estimated Number of Responses: 4181.

Estimated Total Annual Burden on Respondents: 20,700.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, USDA, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742, telephone (202) 692-0045.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, Rural Housing Service, USDA, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250-0742. A comment is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

List of Subjects in 7 CFR Part 1940

Endangered and threatened wildlife, Environmental protection, Flood plains, National wild and scenic river system, Natural resources, recreation, Water supply.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

2. Subpart S is added part 1940 to read as follows:

Subpart S—Environmental Policies and Procedures

Sec.	
1940.901	General.
1940.902	Authority.
1940.903	Objectives.
1940.904	Definitions.
1940.905	Agency environmental responsibilities.
1940.906	Applicant environmental responsibilities.
1940.907	General environmental standards.
1940.908	Special environmental standards.
1940.909	[Reserved].
1940.910	Integration of the environmental review process with the Agency decision-making process (timing).
1940.911	Public involvement.
1940.912	Classification of Agency actions.

- 1940.913 Categorical exclusions.
- 1940.914 Class I actions.
- 1940.915 Class II actions.
- 1940.916 Environmental impact statement actions.
- 1940.917–1940.920 [Reserved]
- 1940.921 Third party preparation of Class II environmental assessments.
- 1940.922 Modifications to environmental documents.
- 1940.923 Preparation of an environmental impact statement.
- 1940.924 Record of decision.
- 1940.925 Use of completed final environmental impact statement.
- 1940.926 Supplements to environmental impact statements.
- 1940.927–1940.930 [Reserved]
- 1940.931 State and local environmental procedures.
- 1940.932–1940.933 [Reserved]
- 1940.934 Adoption.
- 1940.935 Intermediary financial assistance programs.
- 1940.936 [Reserved]
- 1940.937 Management, lease, and disposition of Agency-owned property.
- 1940.938 Emergencies.
- 1940.939–1940.940 [Reserved]
- 1940.941 Environmental risk management.
- 1940.942 Lead-based paints.
- 1940.943 Indoor air pollutants.
- 1940.944–1940.948 [Reserved]
- 1940.949 Appeals.
- 1940.950 [Reserved]

Subpart S—Environmental Policies and Procedures

§ 1940.901 General.

This subpart contains the environmental policies and procedures of the Rural Housing Service (RHS) and the Rural Business-Cooperative Service (RBS). Hereinafter, RHS and RBS are collectively referred to as the Agency. This subpart implements the environmental requirements of a series of Federal laws, regulations, and Executive Orders, and integrates these environmental requirements with Agency planning and decisionmaking processes. Agency actions covered by this subpart include, but are not limited to:

- (a) All forms of Agency financial assistance, including loans, grants, and guarantees;
- (b) Servicing actions, including, transfers, assumptions, subordinations and parity issues, partial releases, and the management, leasing, and sale of inventory property;
- (c) Agency approval or concurrence of guaranteed lender activities, when such approval or concurrence is required by program regulations; and
- (d) [Reserved]

§ 1940.902 Authority.

(a) This subpart derives its authority from and is intended to be consistent with:

- (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*);
 - (2) Council on Environmental Quality (CEQ), Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, (40 CFR parts 1500–1508), and
 - (3) U.S. Department of Agriculture, National Environmental Policy Act Policies and Procedures (7 CFR parts 1b–1c).
- (b) The CEQ regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable parts of the CEQ regulations will be provided.
- (c) This subpart is designed to integrate NEPA requirements with the planning, environmental review and consultation procedures required by other laws or by Agency rules and practice. Application of this subpart results in a single comprehensive environmental review document for each proposed action which provides one reference point for the Agency's compliance with applicable environmental laws, regulations, and Executive Orders, including but not limited to:
- (1) Archaeological and Historic Preservation Act (16 U.S.C. 469 *et seq.*);
 - (2) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*);
 - (3) Clean Air Act (42 U.S.C. 7401 *et seq.*);
 - (4) Clean Water Act (33 U.S.C. 1251 *et seq.*);
 - (5) Coastal Barrier Improvement Act (42 U.S.C. 4028);
 - (6) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);
 - (7) Coastal Zone Management Act—section 307(c)(1) and (2), (16 U.S.C. 1456);
 - (8) Consolidated Farm and Rural Development Act, section 363 (7 U.S.C. 2006e)
 - (9) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);
 - (10) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);
 - (11) Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*);
 - (12) Food Security Act, title XII, subtitle B, Highly Erodible Land Conservation and subtitle C, Wetland Conservation, (16 U.S.C. 3801 *et seq.*);
 - (13) Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 *et seq.*);
 - (14) National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
 - (15) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);
 - (16) National Trails System Act (16 U.S.C. 1241 *et seq.*);

- (17) Native American Graves and Repatriation Act (25 U.S.C. 3001 *et seq.*);
- (18) Noise Control Act (42 U.S.C. 4901 *et seq.*);
- (19) Pollution Prevention Act of 1990 (Pub. L. 101–508, § 6601 *et seq.*);
- (20) Safe Drinking Water Act—section 1424(e), (42 U.S.C. 300h);
- (21) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*);
- (22) Wilderness Act (16 U.S.C. 1131 *et seq.*);
- (23) Executive Order 11514, Protection and Enhancement of Environmental Quality (3 CFR, 1966–1970 Comp., p. 902);
- (24) Executive Order 11593, Protection and Enhancement of the Cultural Environment (3 CFR, 1971–1975 Comp., p. 559);
- (25) Executive Order 11988, Floodplain Management (3 CFR, 1977);
- (26) Executive Order 11990, Protection of Wetlands (3 CFR, 1977);
- (27) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (3 CFR, 1994 Comp., p. 859);
- (28) Department of Agriculture, National Environmental Policy Act, Final Policies and Procedures (7 CFR, subtitle A, part 1b)
- (29) Department of Agriculture, Enhancement, Protection and Management of the Cultural Environment (7 CFR, subtitle B, chapter XXXI, parts 3100–3199)
- (30) Agriculture Departmental Regulation (DR) 5600–2, Environmental Justice
- (31) Agriculture Departmental Regulation (DR) 9500–3, Land Use Policy
- (32) Agriculture Departmental Regulation (DR) 9500–4, Fish and Wildlife Policy
- (33) Other statutes as listed in 7 CFR §§ 1940.941(a) and 1940.942(a)

§ 1940.903 Objectives.

This subpart, with the exception of §§ 1940.941–1940.943, is designed to implement the requirements of the National Environmental Policy Act, the purpose of which is to ensure that federal agencies make decisions that are based on an understanding of the environmental consequences, and take actions that protect, restore, and enhance the environment (40 CFR § 1500.1).

(a)–(b) [Reserved]

(c) The Agency will involve the applicant, the public, other Federal agencies, Indian Tribes, State and local governments, low income and minority populations, organizations, and

interested and affected persons in the planning and environmental review process. To accomplish this objective, the Agency will:

(1) Inform the applicant of the Agency's environmental policies and procedures, especially as they pertain to the applicant's proposal;

(2) Ensure that designated Agency staff are available to advise potential applicants of environmental studies or other information foreseeably required for later federal action;

(3) Include provisions in the environmental review process which provide opportunity for the public to express their views or concerns about proposed Agency actions; and

(4) Make environmental documents available to the public for review and comment as early as possible in the decisionmaking process and before decisions are made by the Agency.

(d) [Reserved]

§ 1940.904 Definitions.

Refer to the Table of Contents for the appropriate section for definitions applicable to the management of hazardous substances, lead-based paint, and indoor air pollution.

Action. Any act the Agency takes or proposes to take that is subject to NEPA requirements, as described in § 1940.901 (40 CFR § 1508.18).

Agency. When used with a capital "A" in this subpart, refers collectively to the Rural Housing Service (RHS) and the Rural Business-Cooperative Service (RBS), agencies within the Rural Development mission area, United States Department of Agriculture.

Animal unit. A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

Applicant. To be interpreted broadly. Refers to the individual or entity requesting or benefiting from federal assistance, including federal financial assistance. Includes, but is not limited to: applicants for direct and guaranteed loans or grants, guaranteed lenders, lenders' clients, intermediaries, third parties, borrowers and grantees, as appropriate.

Approval official. Agency employee with program authority to approve the request for federal action.

Categorical exclusion (CATEX). An action which generally does not,

individually or cumulatively, have a significant effect on the quality of the human environment and, therefore, is generally exempt from the NEPA requirement to prepare an environmental assessment or an environmental impact statement. However, such an action is NOT exempt from the requirements of other environmental laws, regulations, and Executive Orders. The "Categorical Exclusion Checklist" is used to determine compliance with these other requirements. Depending on the results of the "Checklist," an environmental assessment may be required.

CATEX. Categorical exclusion.

CEQ. Council on Environmental Quality.

Cold water aquatic animal. In relation to an aquatic animal production or processing facility, includes, but is not limited to, the Salmonidae family of fish; e.g., trout and salmon.

Commitment of resources. As used in this subpart, "commitment of resources" is to be interpreted broadly. Refers to the Agency's decision to agree to or participate in a proposed action. A commitment of resources is represented by, but is not limited to: loan approval, grant approval, obligation of funds, a conditional commitment for guarantee, a conditional commitment for construction, a letter of conditions, a letter authorizing interim financing, and Agency consent to or approval of a servicing request.

Connected (related) actions. Actions which are closely related and must therefore be evaluated in the same environmental review document (40 CFR § 1508.25). Actions are connected if they:

(1) Automatically trigger other actions which may require an environmental review;

(2) Cannot or will not proceed unless other actions are taken previously or simultaneously; or

(3) Are interdependent parts of a larger action and depend on the larger action for their justification.

Council on Environmental Quality (CEQ). An agency established within the Executive Office of the President by the National Environmental Policy Act of 1969 with additional responsibilities provided by the Environmental Quality Act of 1970; author of the National Environmental Policy Act implementing regulations (40 CFR parts 1500–1508); responsible for providing advice and guidance on NEPA issues pursuant to 40 CFR parts 1500–1508; and approves agency NEPA procedures.

Critical action. An action which, if located or carried out within a floodplain, poses a greater than normal

risk for flood-caused loss of life or property. Critical actions include, but are not limited to, those actions which create or extend the useful life of facilities which:

(1) Produce, use, or store highly volatile, flammable, explosive, toxic or water reactive material;

(2) Are likely to contain occupants who may not be sufficiently mobile and require assistance to avoid loss of life or injury during flood and storm events (except single family housing);

(3) Contain emergency operation centers that need to be operative during flood and storm events; or

(4) House irreplaceable artifacts or difficult to replace records of community life and business.

Cumulative impact. The impact on the environment which results from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time.

Data collection form. The "Request for Environmental Information" or equivalent document, available in any Rural Development office, used to collect environmental information from the applicant or from others.

Direct effect. An effect that is caused by an action and occurs at the same time and place.

Draft EA. Draft environmental assessment.

Draft environmental assessment (Draft EA). An environmental assessment in draft form, ready for public review and comment under the public notice procedures of this subpart. A draft environmental assessment reflects the results of appropriate consultation, and if applicable, an examination of alternatives and proposed mitigation. Refer also to environmental assessment.

EA. Environmental assessment.

Effect. As used in this subpart, the term is synonymous with "impact."

Emergency circumstance. An event or collection of factors or circumstances which involve an immediate or imminent danger to public health or safety.

Environmental assessment (EA). A public document which provides sufficient information and analysis for the Agency to determine whether to prepare an environmental impact statement or a finding of no significant impact. This subpart recognizes Class I and Class II environmental assessments. The Agency is fully responsible for the

scope and contents of all environmental assessments prepared or adopted in accordance with this subpart.

Environmental document. Refers collectively to the Agency forms, documents, and all supporting material necessary to demonstrate Agency compliance with the National Environmental Policy Act and other applicable environmental laws, regulations, and Executive Orders for a proposed action.

“Environmental Policies and Procedures”. A manual, not published in the **Federal Register**, but available in any Rural Development office, which contains, in addition to this published rule (applicable to applicants and their business transactions with the Agency), detailed procedures and instructions applicable to Agency personnel for the implementation of this subpart.

Environmental review. The environmental analysis required by the National Environmental Policy Act and by this subpart. There are three basic levels of environmental review or analysis: categorical exclusion, environmental assessment, and environmental impact statement. The term can refer to any one of the levels of environmental review or it can be used collectively, referring to all three.

Finding of No Significant Impact (FONSI). A decision document, signed by the Agency approval official, in which the official states that based on the Class I or Class II environmental assessment prepared for a proposed action, the action will not have a significant effect on the human environment, and therefore an environmental impact statement will not be prepared. A completed environmental assessment includes the FONSI.

Floodplain. The area subject to inundation from a 100 year flood, unless a critical action is involved, in which case the floodplain of concern is the area subject to a 500 year flood.

(1) 100-year (base) flood. A flood having a 1.0-percent probability of being equaled or exceeded in any given year, as defined by the Federal Emergency Management Agency.

(2) 500-year (critical action) flood. A flood having 0.2-percent probability of being equaled or exceeded in any given year, as defined in the Floodplain Management Guidelines for Implementing Executive Order 11988.

FONSI. Finding of No Significant Impact.

Important land resources. The land uses or resources identified and defined in the United States Department of Agriculture, Departmental Regulation 9500-3, Land Use Policy: important

farmland, floodplains, wetlands, prime forestland, and prime rangeland. This Departmental Regulation is available in any Rural Development office.

Indirect effect. An effect caused by an action that is later in time or removed in distance from the action, but is still reasonably foreseeable. Indirect effects may include growth inducing impacts and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Intermediary. Under certain programs, the Agency may provide financial assistance to one entity, which in turn redistributes that financial assistance to one or more other entities. These entities are called by a variety of names depending on the program. For consistency, this subpart will apply the term “intermediary” to the entity which receives the financial assistance directly from the Agency.

Mitigation. A measure or action, normally required of the applicant and contained in the environmental document, which is specially designed to avoid, minimize, rectify, reduce, or compensate for the potential adverse environmental impacts of a proposed action. It also includes the concept of the no-action alternative.

National Environmental Policy Act (NEPA). Established a national environmental policy which mandates procedures to ensure that federal agencies make decisions based on an understanding of the environmental consequences and take actions which protect, restore, and enhance the environment. Also established the Council on Environmental Quality.

NEPA. National Environmental Policy Act.

No-action alternative. The alternative of not approving the request for federal action in order to avoid an environmental effect.

Reasonable alternative. An alternative action that is reasonable and capable of being achieved considering relevant constraints. The test of practicability depends upon the characteristics of the alternative under consideration and the constraints that may be imposed on it by environmental, economic, legal, social and technological parameters. This test is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. Neither may an alternative be rejected from consideration as reasonable solely on the basis of moderately increased costs. The minimum range of alternatives that must be analyzed to determine if a reasonable alternative

exists includes the following three categories of alternatives:

- (1) Alternative project sites or designs,
- (2) Alternative projects with similar benefits as the proposed action, and
- (3) The no-action alternative.

Preparer. The individual who is responsible for completing the environmental review. The preparer is an Agency official unless otherwise specified by this subpart.

Rural Development Office. Any local U.S.D.A. office which handles Rural Housing Service or Rural Business-Cooperative Service assistance.

Scope and scoping. Scope consists of the range of actions, alternatives, and impacts to be considered by the Agency. Scoping refers to an early and public process for determining the scope of issues to be addressed in the environmental review and for identifying the significant issues related to a proposed action.

Similar actions. Actions, which when viewed with other reasonably foreseeable or proposed Agency actions, have points in common, such as common timing or geography, that provide a basis for evaluating their environmental consequences together in the same environmental review document.

State Environmental Coordinator. The one Agency official responsible for environmental duties within the jurisdiction of a Rural Development State office, who is the primary point of contact for information and assistance on environmental issues involving the Agency, for both Agency personnel and the public, including other Federal agencies, Indian Tribes, State and local governments, low income and minority populations, organizations, and interested or affected persons.

Third party. Any entity which receives assistance from an intermediary. Third parties are only considered applicants for the purposes of this subpart when the assistance to the third party is provided by the intermediary using Agency funds.

Warm water aquatic animal. In relation to an aquatic animal production or processing facility, includes, but is not limited to, the Ameiuridae, Centrarchidae, and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

Water resource project. Any type of construction which would result in either impacts on water quality and the beneficial uses that water quality criteria are designed to protect, or any change in the free-flowing characteristics of a particular river or stream to include physical, chemical, and biological characteristics of the

waterway. This definition encompasses construction projects within and along the banks of rivers or streams, and projects involving withdrawals from, and discharges into such rivers or streams. Projects which require Corps of Engineers dredge and fill permits are water resource projects.

§ 1940.905 Agency environmental responsibilities.

All Agency personnel are responsible for compliance with this subpart. The environmental responsibilities for key Agency positions are outlined below. Applicants with environmental questions should contact the Agency program representative with whom they filed the application. General inquiries from the public and other Federal, State, or local governments should be addressed to the most appropriate individual listed below:

(a) *Administrator*. The Administrator for each Agency has direct responsibility for Agency compliance with all environmental laws, regulations, and Executive Orders applicable to Agency programs and administrative actions. The Administrator ensures that this responsibility is delegated to appropriate Agency staff and remains informed on the general status of Agency compliance, and the need for any necessary improvements.

(b) *State Director*. This individual ensures compliance with the requirements of this subpart within a specific area of jurisdiction; nominates one individual to serve as State Environmental Coordinator and a second individual to serve as Assistant State Environmental Coordinator (these may be full-time or collateral duty assignments); and ensures the development and maintenance of a State Natural Resource Management Guide.

(c) *State Environmental Coordinator*. This individual is the Agency's NEPA liaison and acts as an advisor to the State Director and program staff on environmental issues, provides the leadership and technical expertise for State-wide implementation of this subpart, and is a point of contact for public inquiries on environmental issues involving the Agency. The concurrence and signature of the State Environmental Coordinator is required for all Class I and Class II environmental assessments, prior to issuance of the Finding of No Significant Impact, and for all Environmental Impact Statements, prior to issuance of the Record of Decision; this assures the Agency of quality control in compliance with this subpart.

(d) *Program Director, Rural Development Manager, and Community Development Manager*. These individuals are responsible for ensuring that applicants are informed of Agency environmental requirements and for preparing the appropriate level of environmental review in compliance with the requirements of this subpart for all program actions within their jurisdiction and authority.

§ 1940.906 Applicant environmental responsibilities.

To comply with the environmental laws, regulations, and Executive Orders applicable to Agency program and administrative actions, the Agency requires the full cooperation of applicants and may require applicants to assume certain environmental responsibilities, such as the collection of environmental information or the drafting of proposed environmental documents. All environmental decisions will be made by the Agency. If the Agency is unable to fulfill the environmental requirements for a specific proposed action, further consideration of the application will be deferred until compliance can be achieved.

(a) Applicants will consider the potential environmental impacts of their proposals at the earliest planning stages to develop proposals that minimize the potential for adverse environmental impacts.

(b) Once the decision to pursue Agency assistance has been made, prospective applicants will promptly contact an Agency official to determine what environmental requirements may apply to their proposals and what environmental responsibilities applicants may need to fulfill.

(c) Applicants will provide the Agency, at the earliest possible date, with the identity of any other Federal or State agency which may be involved in financing the proposal, so the Agency may work with that agency to minimize duplication of effort and to achieve a coordinated and timely response to environmental issues.

(d) Normally an Agency official will prepare the environmental document. However, to do so, the Agency will require certain information from the applicant. The applicant may need to hire professional environmental consultants to gather or prepare this information for the Agency.

(e) A data collection form, either the "Request for Environmental Information" or an equivalent form (available in any Rural Development office), will be used for gathering environmental information from

applicants whose proposals require a Class I or Class II environmental assessment under this subpart. Depending on the environmental issues specific to a proposed action, the Agency may request information in addition to that required by "Request for Environmental Information." Use of a data collection form for categorical exclusions is optional.

(f) Applicants, particularly those with proposals which may have environmental impacts, must review the State Natural Resource Management Guide, as it may assist them in a better understanding of environmental requirements that apply to their proposal. The Guide is available for public review in any Rural Development office. Applicants will be provided with a copy of the Guide, or pertinent portions, upon request.

(g) Applicants will ensure that all required information is current, sufficiently detailed and complete, and is submitted directly to the Agency official processing their request. Timely submission of accurate and complete environmental information will facilitate prompt Agency action on their request.

(h) During the period of application review and processing, applicants will not intentionally take any actions (for example, initiation of construction), including incurring any obligations with respect to their proposed undertaking, which would have an adverse effect on the environment or which would limit the range of alternative actions which could be considered for mitigation measures under the environmental review process. Satisfactory completion of the environmental review process must occur before any Agency decision or commitment of Agency resources on the proposed action. Applicants may develop preliminary plans or designs or perform other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals or mitigation measures.

(i) As applicable, applicants will be required to cooperate with and assist the Agency and any cooperating agency in public involvement, including but not limited to, participating in public meetings, and publishing notices to invite public comment and review of the proposed action, its potential environmental impacts, possible alternatives, and proposed mitigation measures.

(j) Applicants must fulfill the requirements imposed on the proposed

action by other Federal, State, and local agencies with regulatory jurisdiction.

(k) Applicants will promptly notify the Agency official processing their request when changes are made to a proposed action, when public comments are received about the action, or when new or changed information relating to the action's potential environmental effects is received.

§ 1940.907 General environmental standards.

All applicant proposals are subject to the following standards. Applicants must understand and cooperate with the Agency in the application of these standards and, at the Agency's discretion, will assist the Agency by providing any information or assistance necessary to achieve these standards, including participation in the consultation processes and in the development of alternatives and mitigation.

(a) Environmental quality will be considered co-equally with economic, social, and other relevant factors in project development and in Agency decisionmaking relative to the application.

(b) The performance of environmental reviews, including the consideration of alternatives, will be initiated as early as possible in the preapplication or application process. The applicant is required to respond promptly to Agency requests for information and assistance. This will place the Agency in the most flexible and objective position to effectively and fully consider environmental effects and to complete the environmental review process in a timely manner.

(c) The Agency, assisted by the applicant, will include early consultation with the public, including appropriate Federal agencies, Indian tribes, State and local governments, low income and minority populations, organizations, and interested and affected persons, as part of its assessment of the potential impacts of proposed actions.

(d) When adverse environmental impacts of a proposed action are identified (direct, indirect, or cumulative), the applicant will, at the Agency's request, recommend alternative courses of action for Agency review and provide any additional information needed. In choosing a reasonable alternative with the least adverse environmental impact, the Agency will examine the alternative courses of action, including the no-action alternative, and will analyze the potential environmental impacts of both

the proposed action and the alternatives.

(e) If no reasonable alternative exists, including the no-action alternative, the applicant will, at the Agency's request, recommend reasonable measures to mitigate the identified adverse environmental impacts. The Agency will consider the applicant's recommendation, but will not be bound by it in reaching its decision on the mitigation measures that will be required under the completed environmental review.

§ 1940.908 Special environmental standards.

All applicant proposals are subject to the following standards.

(a) *Coastal barrier resources.* As required by the Coastal Barrier Resources Act and the Coastal Barrier Improvement Act, the Agency will not authorize, fund, or carry out any action, if that action would either be located within the Coastal Barrier Resources System (CBRS) or would directly or indirectly affect the CBRS, unless:

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Coastal Barrier Resources Act, and

(2) Consultation regarding the proposed action has been completed with the Secretary of the Interior.

(b) *Coastal zone management areas.* As required by the Coastal Zone Management Act, the Agency will ensure that Federally assisted activities which directly affect the coastal zone management area will be conducted to the maximum extent practicable in a manner consistent with the States' federally-approved coastal zone management program.

(c) *Endangered and threatened species and critical habitat.* Pursuant to the Endangered Species Act, the Agency will not authorize, fund, or carry out any proposal or project that is likely to:

(1) Jeopardize the continued existence of any plant or wildlife species designated as a listed or proposed endangered or threatened species by the Secretary of Interior or Secretary of Commerce; or

(2) Destroy or adversely modify the habitats of listed or proposed species when such habitats have been determined critical to the species' existence by either the Secretary of Interior or Secretary of Commerce, unless the Agency has been granted an exemption for such proposal by the Endangered Species Committee pursuant to section 7(h) of the Endangered Species Act.

(d) *Historic and archaeological resources.* Pursuant to the National

Historic Preservation Act, the Agency will:

(1) Take into account the effect of Agency undertakings, in accordance with 36 CFR part 800, on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places, which includes National Historic Landmarks; and

(2) Ensure that the historic preservation responsibilities of section 110 of the Act are fully integrated into Agency planning and decision-making processes.

(e) *Important land resources.* (1) As required by Departmental Regulation 9500-3, the Farmland Protection Policy Act, and Executive Orders 11988 and 11990, the Agency will not approve or fund any proposed actions involving important farmland, prime rangeland, prime forestland, floodplains, and wetlands that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the Agency approval official determines that the following conditions are first met:

(i) There is no reasonable alternative to the proposed action;

(ii) The proposal includes all reasonable measures for reducing the adverse impacts and the amount of conversion or encroachment; and

(iii) The proposal conforms to the following planning and siting criteria:

(A) The project is not inconsistent with any existing comprehensive plan that guides community growth and reflects a realistic strategy for protecting natural resources;

(B) The project is compatible, to the extent practicable, with any existing State, unit of local government, and private programs and policies to protect farmland; and

(C) The project will encourage long-term, economically viable public investment by fostering development patterns that ensure compact community development.

(2) Pursuant to section 363 of the Consolidated Farm and Rural Development Act, the Agency will not approve any financial assistance (loan or grant) under such act to drain, dredge, fill, level, or otherwise manipulate a wetland, or to engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except for financial assistance for the maintenance of previously converted wetlands (wetlands converted prior to December 23, 1985). Section 363 does not apply to loans for a utility line.

(3) Sections 1211 and 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 and 3821) requires that loans made, insured, or guaranteed under the Consolidated Farm and Rural Development Act cannot be used for a purpose that will contribute to:

(i) Excessive erosion of highly erodible land;

(ii) The conversion of a wetland after December 23, 1985, to produce an agricultural commodity; or

(iii) The conversion of a wetland after November 28, 1990, either to produce an agricultural commodity or to make the production of an agricultural commodity possible.

(f) *National Natural Landmarks.*

Pursuant to the Historic Sites, Buildings and Antiquities Act, the Agency will not provide financial assistance for any activity which will be incompatible with or result in substantial interference with the unique properties of landmarks listed on the National Registry of Natural Landmarks.

(g) *National scenic, historic, and recreation trails.* In accordance with the National Trails System Act, the Agency will not provide financial assistance for any activity which will be incompatible with or result in substantial interference with the nature and purposes of trails designated by Congress as National Scenic, Historic, or Recreation Trails.

(h) *Native American human remains and cultural items.* Pursuant to the Native American Graves and Repatriation Act, the Agency recognizes the rights of lineal descendants and members of Indian tribes and Native Hawaiian organizations to certain Native American human remains and cultural items with which they are affiliated. The Agency will identify and make appropriate disposition of human remains, cultural items, funerary objects, sacred objects, and objects of cultural patrimony that are:

(1) In Agency possession or control;

(2) In the possession or control of an institution or State or local government receiving Agency funds; or

(3) Excavated or discovered on Agency-owned lands or on tribal lands which are the subject of Agency financial assistance.

(i) *Noise.* Pursuant to the Noise Control Act, the Agency will administer its programs to reduce noise pollution and the potential for noise to impact both the environment and Agency financed projects. The Agency will take positive steps to protect the surrounding environment from excessive noise levels generated by Agency financed projects, and will take steps to protect Agency financed projects from excessive noise levels generated by the surrounding

environment. The U.S. Department of Housing and Urban Development standards (24 CFR part 51, subpart B) will be used for the purpose of assessing noise impacts and determining the acceptability of sites in terms of their exposure to noise.

(j) [Reserved]

(k) *Water.* The Agency will not provide financial assistance for any activity that:

(1) Pursuant to section 303(c) of the Clean Water Act, would either impair a State water quality standard, including designated and existing beneficial uses that water quality criteria are designed to protect or that would not meet antidegradation requirements; or

(2) Pursuant to section 1424(e) of the Safe Drinking Water Act, the Environmental Protection Agency Administrator has determined may contaminate a designated sole source aquifer to the extent that a significant hazard to public health is created.

(l) [Reserved]

(m) *Wild and scenic rivers.* Pursuant to the Wild and Scenic Rivers Act, the Agency will consult with the appropriate river-administering agencies and will:

(1) Not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for study and potential addition to the System by Congress;

(2) Not approve or assist any development (commercial, industrial, residential, farming, or community facilities) located below or above a wild, scenic, or recreational river area, or on any stream tributary thereto, which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area; and

(3) Will take all reasonable measures to avoid impacting rivers or river segments which the National Park Service has identified as potentially eligible for inclusion in the System and has listed in the Nationwide Rivers Inventory, or, if avoidance is not possible, to mitigate adverse impacts.

(n) *Wilderness areas.* In accordance with the Wilderness Act, the Agency will not provide financial assistance for any activity which will be incompatible with or result in substantial interference with the nature and purposes of areas designated or proposed for designation to the National Wilderness Preservation System.

§ 1940.909 [Reserved]

§ 1940.910 Integration of the environmental review process with the Agency decision-making process (timing).

NEPA requires the Agency to use the completed environmental document as a planning tool to help the Agency and the applicant make decisions that are based on an understanding of the environmental consequences of the proposed action and to take actions that protect, restore, and enhance the environment. Thus, the environmental review process must be completed before the Agency's decision on whether or not to participate in or agree to a proposed action.

(a) [Reserved]

(b) *Applicant responsibilities.* The Agency will initiate the appropriate level of environmental review and the collection of environmental information as early as possible in the planning and decision-making process with assistance in information gathering by the applicant. The full cooperation of the applicant is required. Completion of the "Request for Environmental Information" for proposed actions listed as categorical exclusions under § 1940.913 is optional. For all proposed actions requiring a Class I or Class II environmental assessment (§§ 1940.914 and 1940.915), the applicant will:

(1) Complete the "Request for Environmental Information" or an equivalent document as early as practical, but no later than:

(i) When the Agency issues a notice inviting an applicant to file a full application, or

(ii) If such a notice is not applicable, when the Agency receives an application from the applicant; and

(2) The applicant will not take any actions (construction, in particular) or incur any obligations during the environmental review process which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment.

(c) [Reserved]

(d) *Completion of the environmental review.* The environmental review will be considered complete when the appropriate environmental document has been properly executed, when all applicable public notices have been published, the associated public comment periods have expired, and the Agency has taken any necessary actions to address the comments received.

(e) *Agency decision on proposed action.* Environmental review and consideration will occur concurrently with all other considerations, forming the basis for the Agency's decision on

the proposed action. The environmental review will be completed before loan approval, obligation of funds, or other commitment of Agency resources, whichever occurs first, for all programs; and before the Agency decision on any servicing action which is subject to the provisions of this subpart. Agency resources will not be committed until the environmental review is completed.

(f)–(g) [Reserved]

§ 1940.911 Public involvement.

(a) [Reserved]

(b) *General.* (1) This section integrates the public involvement and public notice requirements from a series of environmental laws, regulations, and Executive Orders applicable to Agency program and administrative actions, and comprises the minimum public involvement and public notice requirements for the Agency and the applicant. Additional meetings, notices, or other mechanisms may be used to achieve an adequate level of public involvement when the Agency determines that conditions or circumstances, such as public interest or controversy, make it appropriate to do so. For additional guidance on public involvement when preparing environmental impact statements, refer to § 1940.923.

(2) Applicants will consult with the Agency in the early planning stages of their proposal on applicable public involvement requirements.

(3) All public comments will be fully considered in the development and completion of the environmental document.

(4) The public notice requirements of paragraphs (c), (d), and (e) of this section are not applicable to single family housing actions referenced in § 1940.913(a)(1)(i), (ii), (iv), and (vi), even when such actions trigger an environmental assessment under this subpart.

(c) *Public notices for environmental assessments.* Environmental assessments, prepared in accordance with this subpart, are subject to the following public notice requirements:

(1) Notice of draft environmental assessment (draft EA).

(i) A notice of draft EA will be published for all Class I and Class II actions. The notice will state that a draft EA is available for public review and comment and explain how a copy may be obtained for review. The notice will briefly describe the proposed action, and if applicable, potential direct and indirect impacts, possible alternatives, and mitigation.

(ii) The public review and comment period will be a minimum of 21

calendar days from the final date of publication of the notice of draft EA for Class I actions and 30 days for Class II actions.

(iii) If no comments or other information are received during the comment period, or if the Agency determines that the comments or other information received result in only minor changes to the draft EA and that an environmental impact statement is not required, the Agency may make the changes to the draft EA and proceed to the finding of no significant impact. Minor changes are confined to the following Agency responses:

(A) Making factual corrections, such as corrections to names, addresses, dates.

(B) Explaining why the comments or other information received do not warrant further Agency response, citing the sources, authorities, or reasons which support the Agency's position and, if appropriate, indicating those circumstances which would trigger Agency reappraisal or further response.

(iv) If the Agency determines that public comments or other information received necessitate substantive changes to the draft EA, the Agency must decide whether these substantive issues can be adequately addressed and, if necessary, mitigated within the constraints of an EA, or whether an environmental impact statement is needed. Substantive changes include, but are not limited to, the following Agency responses:

(A) Modifying alternatives, including the proposed action, and mitigation measures.

(B) Developing and evaluating alternatives, including mitigation measures, not previously given serious consideration by the Agency.

(C) Supplementing, improving, or modifying Agency environmental analyses.

(v) If a determination is made to proceed with an EA, the changes will be made and the notice of amended draft EA will then be republished, in the same manner as before, for a minimum of 15 calendar days. The notice of the amended draft EA will briefly describe the substantive changes to the draft EA, invite the public to review and comment on those changes, and explain how a copy may be obtained for review.

(2) Notice of the FONSI.

(i) The Agency approval official will complete, date and sign the FONSI and append it to the draft EA only when the requirements of 1940.911(c)(1)(i)–(v) have been met.

(ii) A notice of FONSI will be published with no public comment period. Upon publication of this notice, the environmental assessment will be

considered complete. The Agency will take no action with respect to its decision on the proposed action until the notice of FONSI has been published.

(d) *Actual notice to affected property owners.* (1) A good-faith effort to notify all property owners potentially affected by a proposed action and offer them an opportunity to review and comment on the action will be made. At the request of the Agency, applicants will identify potentially affected property owners and will mail or otherwise deliver to each owner a copy of all appropriate public notices. If identification of all affected property owners cannot be achieved with a reasonable effort, the applicant, with the approval of the Agency, may replace or supplement individual copies of public notices with limited mass mailings, radio broadcasts, or some other combination of public announcements.

(2) If property owners are mailed or otherwise delivered an individual copy of the notice of draft EA, these property owners need not be sent individual copies of the notice of FONSI, if:

(i) The mitigation measures contained in the FONSI are unchanged from those outlined in the notice of draft EA,

(ii) The property owners did not raise objections or concerns about the draft EA, and

(iii) The scope of the proposed action has not changed.

(e) *Publication and distribution of notices.* (1) After the Agency writes the public notice and provides explicit directions to the applicant on publishing and distributing the notice, the applicant will mail or otherwise deliver copies of the notice to the individuals or entities identified by the Agency to receive the notice and to the list of affected property owners compiled by applicant. The applicant will submit to the Agency an affidavit of publication from each newspaper and a list of all parties who were mailed an individual copy of the notice.

(2) All public notices will be published by the applicant for at least 3 consecutive days in a daily newspaper or for 2 consecutive publications in a non-daily newspaper, with the exception of the notice of FONSI. The notice of FONSI will be published only once. The applicant will choose, with the concurrence of the Agency, a newspaper of general circulation in the vicinity of the proposed action or any local or community oriented newspaper, provided the newspaper circulation covers the proposed action's area of environmental impact. The notice will be published in easily readable type in the classified (nonlegal) section of the newspaper. If the affected area is largely

non-English speaking or bilingual, the notice will also be published in the primary non-English language newspaper serving the area.

(3) Individual copies of the notice will be sent by the applicant (at the same time the notice is published in the newspaper) to:

- (i) The appropriate regional EPA office;
- (ii) State and regional review agencies established under Executive Order 12372;
- (iii) The State Historic Preservation Officer;
- (iv) State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action;
- (v) Any potentially affected Indian Tribe;
- (vi) Any individuals, groups, and local, State, and Federal agencies known to be interested in the project or who have requested that they be kept informed;
- (vii) Affected property owners that have been identified; and
- (viii) Any other interested parties, including low income and minority populations, that the Agency has identified.

(4) All costs associated with publication and distribution, including development of a list of affected property owners, if required, will be borne by the applicant.

(f) *Public information meetings.* (1) A public information meeting will be held near the project site to discuss and receive comments on the proposed action, when:

- (i) There may be substantial environmental controversy concerning the proposed action; or
- (ii) A meeting is requested by another Federal, State, or local government agency with jurisdiction over the action and the request is supported by reasons why such a meeting will be helpful.

(2) If the Agency determines that a public information meeting is necessary, attendance and participation by the applicant is mandatory. When requested by the Agency, applicant will organize the meeting, procure a meeting place, publish a notice of the meeting inviting the public to attend, present information on the proposal at the meeting, and fulfill related activities.

(g) *Public access to environmental documents.* The Agency will make environmental documents, the published notices and comments received, and any supporting material available to the public pursuant to the provisions of the Freedom of Information Act, without regard to the exclusion for interagency memoranda

where such memoranda transmit comments of federal agencies on the environmental impact of the proposed action. For specific projects, interested parties can request this material from the State Director or the Freedom of Information Coordinator located in each Rural Development field office.

Requests for documents of a more general nature can be addressed to the Freedom of Information Officer, at the Rural Development National office in Washington, DC.

(1) Applicants will be given a complete copy of the environmental review for their proposal without cost.

(2) Environmental documents to be made available to the public will be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other federal agencies, including CEQ.

(3) Environmental documents which are voluminous or contain hard to reproduce maps and similar items will be made available for viewing at one or more locations convenient to the public, such as a Rural Development field office or public library, in lieu of providing copies of such documents to the public.

(h) [Reserved]

§ 1940.912 Classification of Agency actions.

(a) *CEQ requirements.* CEQ regulations (part 1507.3) require Federal agencies to classify potential actions into three categories:

(1) Actions which normally do not require either environmental impact statements or environmental assessments (such actions are referred to as categorical exclusions);

(2) Actions which normally require environmental assessments, but not necessarily environmental impact statements; and

(3) Actions which normally require environmental impact statements.

(b) *Classification of Agency actions.* The classification of Agency actions into categories provides both the Agency and the applicant with a preselected starting point for beginning the environmental review process. Each category of action and the corresponding level of environmental review is briefly described as follows:

(1) *Categorical exclusion actions.* These are actions which do not, individually or cumulatively, have a significant effect on the quality of the human environment and, therefore, are exempt from the NEPA requirement to prepare an environmental assessment or environmental impact statement. However, such actions are NOT exempt

from the requirements of other environmental laws and the Agency and the applicant must take steps to ensure compliance with such laws:

(i) Specifically, CEQ regulations (part 1508.4) require the Agency to provide a mechanism for identifying when extraordinary circumstances exist. That is, the Agency must provide a mechanism for identifying when an action that is normally categorically excluded under NEPA has the potential for a significant effect on the human environment.

(ii) The mechanism chosen by the Agency is a categorical exclusion checklist which documents whether or not an extraordinary circumstance exists and the applicability of other environmental laws, regulations, and Executive Orders to the specific proposal in question. An extraordinary circumstance exists when the proposed action has the potential to impact resources protected by law, regulation, or Executive Order, is controversial for environmental reasons, or is a segment or phase of a larger action, which, when considered as a whole, would not qualify as a categorical exclusion.

(2) Class I and Class II environmental assessment actions. For the purposes of implementing NEPA, these actions are presumed to be major Federal actions, as defined in CEQ regulations (part 1508.18). These actions require the completion of an environmental assessment to determine if the specific proposal in question has the potential for a significant impact on the human environment. Class I actions typically have less potential for significant impacts than Class II actions. As a result, the environmental assessment prepared for a Class I action is less detailed than the assessment prepared for a Class II action.

(3) *Environmental impact statement actions.* These are Agency actions that have the potential for a significant impact on the quality of the human environment and require the completion of an environmental impact statement.

(c) *Raising the level of environmental review.* (1) The completed level of environmental review for a specific action will not be less than what is required by the classification of that action in this subpart.

(2) Environmental conditions, public controversy, and other characteristics unique to a specific action can trigger the need for a higher level of environmental review, despite what the Agency classification of that action in this subpart indicates is necessary. That is, the presence of an extraordinary circumstance can trigger a more detailed environmental review for an action

classified as a categorical exclusion; an action classified as a Class I action can be raised to a Class II level if there is a potential to impact more than one resource, etc.; and both Class I and Class II actions can be raised to an environmental impact statement level, if the potential for significant impacts is evident. In all cases, if the proposed action represents one of several phases of a larger project, or one segment of a larger project being funded by other entities, the Agency will complete the appropriate level of environmental review for the entire project.

(3) If it is clear that an action requires the preparation of a higher level of review than what is called for by the classification of that action in this subpart, the Agency and the applicant will proceed directly to the preparation of the higher review.

(4) Any questions about the appropriate level of environmental review for a specific action will be referred by the Agency official or the applicant to the State Environmental Coordinator, who will consult with the National Office environmental staff, as necessary.

§ 1940.913 Categorical exclusions.

Below is a list of Agency actions normally classified as categorical exclusions.

(a) *Housing actions.* (1) Financial assistance for:

(i) The construction of a single family unit (dwelling) or an addition to an existing single family unit.

(ii) The approval of an individual building lot.

(iii) The construction of a new multiple unit housing project or the expansion of an existing multiple unit housing project, when the completed project will be confined to a single site not to exceed one acre and will have no more than:

(A) Four units without public water and sewer; or

(B) Ten units with public water and sewer.

(iv) The purchase, rehabilitation, replacement on-site, or renovation of any existing housing units.

(v) The development of a subdivision, including land purchase for a subdivision, site development for a subdivision, or planning or technical assistance supporting or leading to subdivision development, when the completed subdivision will have no more than four lots and is not a segment or phase of a larger subdivision.

(vi) The expansion of a multiple unit housing project previously approved by the Agency, or financial assistance for single family housing construction on a

lot in a subdivision previously approved by the Agency, provided that:

(A) The action is consistent with all previously adopted requirements for the multiple unit housing project or subdivision in question, and

(B) The Agency environmental review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested.

(2) Preapproval of a subdivision, as required by program regulations, when the completed subdivision will have no more than four lots and is not a segment or phase of a larger subdivision.

(b) *Business and essential community facility actions.* Financial assistance for:

(1) An existing facility, when:

(i) New construction will not be involved;

(ii) There will be no large increases in employment;

(iii) There will be no increase in the production of gaseous, liquid, or solid wastes and no change in the type or content of such wastes;

(iv) The production, handling, treatment, and disposal practices for gaseous, liquid, or solid wastes comply with applicable Federal, State, and local regulations, and there is no history of violations;

(v) It is not a facility that presently or previously produced or stored hazardous wastes or disposed of hazardous wastes on the facility's property; and

(vi) None of the following are involved: Gaseous, liquid, or solid substances or wastes that are classified as hazardous, toxic (poisonous), radioactive, odorous, or medical waste.

(2) Construction of a new facility devoted solely to fire and rescue, or the expansion of such a facility, when the completed structure is limited to a building not exceeding one story and three bays and contains no additional capacity for emergency shelter or other purposes.

(3) A proposal for the purchase, renovation, replacement, restoration, or combination thereof, of an existing facility, on the original site, with minimal change in use, size, capacity, purpose, operation, or design from the original facility, including but not limited to: Replacement in-kind of utility lines, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements.

(4) A proposal for the purchase, renovation, replacement, restoration, or combination thereof, of an existing

overnight facility (for example, an assisted living facility, group home, dormitory, detention facility, nursing home, or hospital) on the original site, with minimal change in use, size, capacity, purpose, operation, or design from the original facility and no expansion in the number of beds (or rooms, if the facility is a hotel).

(5) The purchase and installation of office equipment, public safety equipment, or motor vehicles.

(6) Equipment purchase, renovation, replacement, restoration, or combination thereof, necessary to the operation of an existing facility, provided there are no connected (related) actions, which, when considered together, would require a higher level of environmental review.

(7) The purchase of stock (an ownership interest) in a business.

(8) Short term working capital to support day-to-day operating expenses.

(9) Refinancing of debt, provided the loan approval official certifies:

(i) That there is no evidence the applicant is using refinancing as a means of avoiding compliance with the environmental requirements of this subpart; and

(ii) If new construction or renovations are involved, that the construction was completed prior to the filing of the request for financial assistance; and

(iii) That the facility is currently in compliance or will be brought into compliance by means of the financial assistance requested with all applicable federal, state, and local standards.

(c) *Agricultural actions.* Financial assistance for:

(1) The purchase of an existing farm, or an enlargement to an existing farm, provided no shifts in land use are proposed beyond the limits stated in paragraphs (c)(9), (10), and (11) of this section.

(2) The purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (c)(9), (10), and (11) of this section.

(3) Construction of essential farm service buildings, and repairs and improvements to them.

(4) Construction of private, on-site water facilities, such as a drilled well for a homeowner.

(5) Installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(6) Replacement or restoration only of irrigation facilities, to include those

facilities described in paragraph (c)(5) of this section, with minimal change in use, size, capacity, or location from the original facility. The facility to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons, otherwise, the action will be viewed as an installation of irrigation facilities.

(7) Development of farm ponds or lakes of no more than 5 acres.

(8) Conversion of land in agricultural production to pastures or forests, or conversion of pastures to forests.

(9) Conversion of no more than 160 acres of pasture to agricultural production.

(d) *General categorical exclusion actions.* (1) Loan-closing and servicing activities, including but not limited to, appraisals, transfers, assumptions, subordinations, partial releases, consent to additional indebtedness, approval of the use of reserve funds, construction management activities, and minor amendments or revisions to approved projects (such as the provision of additional financial assistance for cost overruns), provided such activities do not alter the purpose, operation, location, or design of the project as originally approved.

(2) The lease or disposal of real property owned by the Agency when the transaction is either not controversial for environmental reasons or when there is no planned change in use of the real property within the reasonably foreseeable future.

(3) Financial assistance for technical or planning assistance, provided:

(i) The technical or planning assistance is not attached to an imminent action which separately would not qualify for a categorical exclusion; and

(ii) Applicants consider and document in their plans:

(A) The existing environmental quality and the important environmental factors within the planning area; and

(B) The potential environmental impacts on the planning area of the plan, and the potential impacts of the alternative planning strategies that were reviewed.

(4) Project management actions, relating to invitation for bids, contract award, and notice to proceed.

(5) The issuance of regulations and instructions, and amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs.

(6) Procurement activities for goods and services, routine facility operations,

and other such management activities related to the operation of the Agency, provided such actions are in compliance with the applicable Executive Orders:

(i) Executive Order 13134, Developing and Promoting Biobased Products and Bioenergy;

(ii) Executive Order 13123, Greening the Government through Efficient Energy Management;

(iii) Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition;

(iv) Executive Order 13031, Federal Alternative Fueled Vehicle Leadership;

(v) Executive Order 12969, Federal Acquisition and Community-Right-to-Know;

(vi) Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements;

(vii) Executive Order 12843, Procurement Requirements and Policies for Federal Agencies for Ozone-Depleting Substances;

(viii) Presidential Memorandum, April 26, 1994, Memorandum on Environmentally Beneficial Landscaping.

(7) Personnel actions, including reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances.

§ 1940.914 Class I actions.

Below is a list of Agency actions normally classified as Class I actions.

(a) *Housing actions.* Financial assistance for:

(1) The construction of a new multiple unit housing project or the expansion of an existing multiple unit housing project, when the completed project will be confined to a single site not to exceed five acres and will have:

(i) At least five units, but no more than twenty-five units, without public water and sewer; or

(ii) At least eleven units, but no more than fifty units, with public water and sewer.

(2) The development of a subdivision, including land purchase for a subdivision, site development for a subdivision, or planning or technical assistance supporting or leading to the development of a subdivision, when the completed subdivision will have at least five lots, but no more than twenty-five lots and is not a segment or phase of a larger subdivision.

(3) A proposal from an intermediary (proposed grantee) under the Housing Preservation Grant Program.

(4) Preapproval of a subdivision, as required by program regulations, when

the completed subdivision will have at least five lots, but no more than twenty-five lots and is not a segment or phase of a larger subdivision.

(b) *Business and essential community facility actions.* Financial assistance for:

(1) Construction of a new facility or the expansion of an existing facility, when the completed facility meets all of the conditions listed below. The completed facility:

(i) Will be confined to a single site not exceeding five acres;

(ii) Will utilize both public water and sewer;

(iii) Will not be a source of substantially increased traffic generation or substantial increases in employment;

(iv) Will not produce substantial amounts of gaseous, liquid or solid wastes; is in compliance with applicable Federal, State, and local regulations governing the production, handling, treatment, and disposal of such wastes; and has no history of violations; and

(v) Will not produce substantial amounts of infectious, medical, biological, or special medical wastes (including radiological waste of medical origin); is in compliance with applicable Federal, State, and local regulations governing the production, handling, treatment, and disposal of such wastes; and has no history of violations;

(vi) Produces or will produce minimal amounts of gaseous, liquid or solid substance or waste that is classified as hazardous, toxic, radioactive, or odorous; is in compliance with applicable Federal, State, and local regulations governing the production, handling, treatment, and disposal of such wastes; and has no history of violations; and

(vii) Produces none of the following:

(A) A liquid waste that cannot be accepted by a publicly owned treatment works without first receiving pretreatment;

(B) A liquid waste discharge that is a point source subject to a Federal or State discharge permit; or

(C) Gaseous waste or air pollutant that will be emitted from a new source at a rate greater than one hundred tons per year or from an expanded source at a rate greater than twenty-five tons per year.

(2) Construction of a new, not to exceed, 50 bed (or 50 room if a hotel or motel) overnight facility (for example, an assisted living facility, group home, dormitory, detention facility, nursing home, or hospital) or a not to exceed 50 bed (or 50 room if a hotel or motel) expansion to such a facility, when the completed facility meets all of the conditions of paragraph (b)(1) of this section.

(3) Construction of a new utility system, or an expansion of an existing utility system, such as a water, sewer, or natural gas facility, that meets all of the following criteria:

(i) There will not be a substantial increase in the discharge to or in the withdrawal from surface or ground waters, requiring a new or amended discharge or withdrawal permit;

(ii) There will not be a relocation of the discharge to or the withdrawal from surface or ground waters, requiring a new or amended discharge or withdrawal permit;

(iii) There will not be a new discharge to or a new withdrawal from surface or ground waters, requiring the total design capacity of the completed discharge or withdrawal facility to exceed 50,000 gallons per day (withdrawal calculated by pumping the source on an 8 hour basis);

(iv) There will not be extension, enlargement, or construction of interceptors, collection, transmission, or distribution lines beyond a one-mile limit estimated from the closest point of:

(A) The boundary formed by the corporate limits of the community being served; or

(B) If there are developed areas immediately contiguous to the corporate limits of a community, the boundary formed by the limits of these developed areas; or

(C) If an unincorporated area is to be served, the boundary formed by the limits of the developed areas.

(v) The proposed facility is designed for predominantly residential use with other new or expanded users being small-scale, commercial enterprises having limited secondary environmental impacts; and

(vi) For a proposed expansion of a sewage treatment, water supply, or natural gas distribution facility, such expansion would serve a population that is no more than 20 percent greater than the population currently being served.

(4) Construction or extension of publicly owned and maintained streets and sidewalks, including related structures such as curbs, gutters, and storm drains.

(5) The repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, or location from the original facility, and provided that all applicable federal, state, and local permits are obtained and complied with.

(c) *Agricultural actions.* Financial assistance for:

(1) The installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres.

(2) The development of farm ponds or lakes of more than five acres, but no more than ten acres.

(3) Land-clearing operations, including clear cut tree harvesting, of no more than 25 acres, provided all applicable federal, state, and local permits are obtained, and provided the operation is consistent with the recommendations of the State Forester and any enforceable community plans which guide growth and reflect a realistic strategy for protecting natural resources.

(4) Tree harvesting, involving no more than 50 acres, provided a forest stewardship plan or forest management plan, which includes best management practices, is approved by the State Forester, and all applicable federal, state, and local permits are obtained.

(5) The construction of energy producing facilities designed for a single farm's on-farm needs, such as methane digestors and fuel alcohol production facilities.

(6) The conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres.

(7) Use of a farm or portion of a farm for commercial recreational purposes or nonfarm enterprises utilizing no more than ten acres.

(d) *General Class I actions.* (1) Any proposed action which qualifies as a categorical exclusion under this subpart, but which is controversial for environmental reasons.

(2) Loan-closing and servicing activities, including but not limited to, transfers, assumptions, subordinations, partial releases, consent to additional indebtedness, approval of use of reserve funds, and amendments and revisions to all approved actions (such as the provision of additional financial assistance for cost-overruns), listed either as Class I actions in this section or equivalent in size or type to a Class I action and that alter the purpose, operation, location or design of the project as originally approved.

(3) The lease or disposal of real property owned by the Agency, which meets either of the following criteria:

(i) The lease or disposal is controversial for environmental reasons; or

(ii) The lease or disposal will result in a change in use of the real property in the reasonably foreseeable future.

(4) Technical assistance, when the assistance qualifies as a connected (related) action, and the project as a whole is equivalent in size or type to a Class I action as defined in this subpart.

§ 1940.915 Class II actions.

Agency actions, normally classified as Class II actions, are actions which either exceed the limitations established for Class I actions, as described in § 1940.914, or are listed below:

(a) Financial assistance for:

(1) An applicant who will act as an intermediary and provide financial assistance to one or more third parties, either directly or by means of a revolving loan fund, except for financial assistance through the Housing Preservation Grant Program, as required in § 1940.914(a)(3).

(2) An animal feeding operation, which does not meet the most recent Environmental Protection Agency criteria for a concentrated animal feeding operation, further described in 1940.916(a).

(3) A hatchery, fish farm, or other facility containing, growing, or holding aquatic animals, which does not meet the most recent Environmental Protection Agency criteria for a concentrated aquatic animal production facility, further described in 1940.916(b).

(4) A processing facility, including, but not limited to, facilities for processing crops, animals, or aquatic animals, provided that all applicable federal, state, and local permits are obtained and complied with. When considering such proposed actions, the Agency must be particularly attentive to the potential for indirect and cumulative impacts. If direct, indirect, and cumulative impacts cannot be adequately mitigated within the constraints of the Class II EA, an environmental impact statement must be completed. Animals and aquatic animals are further described in § 1940.916(a) and (b), respectively.

(5) The construction, expansion, or replacement on-site, of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, to include stream channeling, provided that all applicable federal, state, and local permits are obtained and complied with. When considering such proposed actions, the Agency must be particularly attentive to the potential impacts to the resources listed below. If impacts to these resources cannot be adequately mitigated within the constraints of the Class II EA, an environmental impact statement must be completed:

- (i) A State water quality standard,
- (ii) A property listed or eligible for listing on the National Register of Historic Places,
- (iii) A river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System,
- (iv) An endangered or threatened species or critical habitat, or
- (v) A wetland.

(6) Land-clearing operations, including clear cut tree harvesting, of no more than 50 acres, provided all applicable federal, state, and local permits are obtained, and provided the operation is consistent with the recommendations of the State Forester and any enforceable community plans which guide growth and reflect a realistic strategy for protecting natural resources.

(7) Tree harvesting, involving no more than 100 acres, provided a forest stewardship plan or forest management plan, which includes best management practices, is approved by the State Forester, and all applicable federal, state, and local permits are obtained.

(b) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under section 601 Energy Impacted Area Development Assistance Program, and the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas.

(c) Any proposed action which qualifies as a Class I action under this subpart, but is controversial for environmental reasons.

(d) Loan-closing and servicing activities, including but not limited to, transfers, assumptions, subordinations, partial releases, consent to additional indebtedness, approval of use of reserve funds, and amendments and revisions to all approved actions (such as the provision of additional financial assistance for cost-overruns), listed either as Class II actions in this section or equivalent in size or type to a Class II action and that alter the purpose, operation, location, or design of the project as originally approved.

(e) Agency proposals for legislation as defined in CEQ's regulations (40 CFR § 1508.17).

(f) The issuance of regulations and instructions, as well as amendments thereto, that describe either the entities, proposals and activities eligible for financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented.

§ 1940.916 Environmental impact statement actions.

An environmental impact statement will be completed for any Class I or Class II action that is determined to have a significant impact on the quality of the human environment. If it is clear that an action requires an environmental impact statement, the Agency will proceed directly to the preparation of the environmental impact statement without prior completion of an assessment. The criteria for determining significant impacts are contained in the CEQ regulations (40 CFR § 1508.27). Agency actions which require an environmental impact statement are listed below:

(a) An animal feeding operation which meets the most recent Environmental Protection Agency criteria for a concentrated animal feeding operation. At the time of publication of this subpart, an animal feeding operation is considered a concentrated animal feeding operation by the Environmental Protection Agency, if it meets either of the following criteria:

(1) The numbers of animals confined are more than the numbers specified in any of the following categories: 1000 slaughter and feeder cattle; 700 mature dairy cattle (whether milked or dry cows); 2,500 swine each weighing over 25 kilograms (approximately 55 pounds); 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 100,000 laying hens or broilers (if the facility has continuous overflow watering); 30,000 laying hens or broilers (if the facility has liquid manure handling system); 5000 ducks; or 1000 animal units; or

(2) The numbers of animals confined are more than the numbers specified in any of the following categories: 300 slaughter and feeder cattle; 200 mature dairy cattle (whether milked or dry cows); 750 swine each weighing over 25 kilograms (approximately 55 pounds); 150 horses; 3,000 sheep or lambs; 16,500 turkeys; 30,000 laying hens or broilers (if the facility has continuous overflow watering); 9,000 laying hens or broilers (if the facility has liquid manure handling system); 1500 ducks; or 300 animal units; and either one of the following conditions are met:

(i) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device (man-made means constructed by man and used for the purpose of transporting wastes); or

(ii) Pollutants are discharged directly into the waters of the United States which originate outside of and pass over, across, or through the facility or

otherwise come into direct contact with the animals confined in the operation.

(3) Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined in § 1940.916(b)(1) and (2) above, if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

(b) A hatchery, fish farm, or other facility which meets the most recent Environmental Protection Agency criteria for a concentrated aquatic animal production facility. At the time of publication of this subpart, a facility is considered a concentrated aquatic animal production facility by the Environmental Protection Agency, if it contains, grows, or holds aquatic animals in either of the following categories:

(1) Cold water fish species or other cold water aquatic animals (refer to § 1940.904 for definition) in ponds, raceways, or other similar structures, which discharge at least 30 days per year, but does not include:

(i) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(ii) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(2) Warm water fish species or other warm water aquatic animals (refer to § 1940.904 for definition) in ponds, raceways, or other similar structures, which discharge at least 30 days per year, but does not include:

(i) Closed ponds which discharge only during periods of excess runoff; or

(ii) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(c) The construction, expansion, or repair of a dam, which meets the definition of a dam under the National Dam Safety Program (P.L. 104-303), as follows:

(1) Any artificial barrier that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water, that:

(i) Is twenty-five feet or more in height from the natural bed of the stream channel or watercourse measured at the downstream toe of the barrier; or if the barrier is not across a stream bed or watercourse, from the lowest elevation of the outside limit of the barrier; to the maximum water storage elevation; or

(ii) Has an impoundment capacity for maximum storage elevation of fifty-acre feet or more; but

(2) Does not include:

- (i) A levee; or
- (ii) A barrier described in § 1940.916(e)(1) that

(A) Is six feet or less in height regardless of storage capacity; or

(B) Has a storage capacity at the maximum water storage elevation that is fifteen acre-feet or less regardless of height; unless the barrier, because of the location of the barrier or another physical characteristic of the barrier, is likely to pose a significant threat to human life or property if the barrier fails (as determined by the Director of the Federal Emergency Management Agency).

(d) Automated chip mills and related facilities, such as loading docks.

§§ 1940.917–1940.920 [Reserved]

§ 1940.921 Third party preparation of Class II environmental assessments.

The applicant may contract with a qualified NEPA consultant for gathering environmental information or for preparing a Class II environmental assessment either at the request of the Agency or with the Agency's prior authorization. Environmental documents prepared by the applicant, without regard to the requirements of this section, will not be accepted by the Agency for any purpose, except as reference or supporting material to an assessment prepared by the Agency. Conditions for third party preparation are:

(a) The applicant is responsible for paying the consultant.

(b) Prior to initiating preparation of the environmental document, the applicant must obtain written authorization to proceed from the State Environmental Coordinator.

(c) The applicant must select consultants whose qualifications and work product clearly demonstrate that they can fulfill their obligations under this subpart and CEQ regulations (40 CFR parts 1500–1508). To demonstrate the consultant's qualifications, the applicant will submit supporting documents for review and concurrence by the State Environmental Coordinator, including, but not limited to:

(1) The technical qualifications of the individuals who will actually be preparing the assessment; and

(2) Work examples consisting of previously written NEPA documents by these individuals.

(d) The applicant and consultant must sign a scope of work, concurred in by the State Environmental Coordinator, which:

(1) Details the scope of the Class II assessment;

(2) States that the assessment is to be completed in accordance with this subpart and CEQ regulations (40 CFR parts 1500–1508);

(3) Provides a timeline for periodic meetings to discuss coordination with other Federal, State, and local agencies; required public notices and public information meetings; potential environmental impacts; evaluation of alternatives; mitigation measures; public comments received; and any other issues of common interest.

(e) The consultant will prepare a draft Class II assessment under the oversight of the State Environmental Coordinator. The Agency will provide the consultant with adequate direction and guidance to ensure development of an environmental assessment which fulfills the requirements of this subpart.

(f) The consultant will sign the draft and the final Class II environmental assessment as the preparer.

(g) [Reserved]

§ 1940.922 Modifications to environmental documents.

Changes to a proposed action in terms of its purpose, operation, location, or design will normally require, at a minimum, modification of the original environmental document and applicable public notice requirements to reflect such change and the associated environmental impacts.

(a)–(b) [Reserved]

(c) *Subsequent loans.* A subsequent loan will be treated as new proposed action with an appropriate level of environmental review completed. To minimize duplication, the environmental review for the subsequent loan can cross-reference to applicable parts of the original environmental review provided data underpinning that part of the environmental review is still current. The original environmental review will not be amended to reflect the subsequent loan. When the subsequent loan is for the purpose of cost overruns, the subsequent loan is treated as a servicing action under this subpart.

§ 1940.923 Preparation of an environmental impact statement.

Environmental impact statements and related documents will be prepared in accordance with CEQ regulations (40 CFR parts 1500–1508) and this subpart.

(a) [Reserved]

(b) *Scoping process.* As soon as possible after a decision has been made to prepare an environmental impact statement, the Agency will initiate a scoping process. The applicant will be responsible for assisting in the scoping process, including information

gathering, participating in the public meetings, and paying associated costs.

(1) *Objectives.* The scoping process will be organized to accomplish the following major purposes, and other purposes listed in CEQ regulations, (40 CFR § 1501.7):

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, affected low income and minority populations, the proponent of the action, and any interested parties, including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement;

(iii) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decision-making schedule;

(2) *Notice of intent.* The first step in the scoping process will be publication by the Agency of a notice of intent in the **Federal Register**.

(c)–(d) [Reserved.]

(e) *Circulation for draft and final environmental impact statement.* The Agency will circulate for review and comment the draft and final environmental impact statement and ensure that sufficient copies of the draft and final environmental impact statement are printed for appropriate distribution.

(1) Draft environmental impact statements will be sent to the parties

identified in paragraph (b)(2) of this section.

(2) The final environmental impact statement will be provided to all parties that commented on the draft environmental impact statement.

(3) Coincident with the distribution of either a draft or final environmental impact statement, a notice of the document's availability will be published:

(i) Within the project area in the same manner as a notice of intent to prepare an environmental impact statement (paragraph (b)(2) of this section); and

(ii) With the aid of the Agency's environmental staff, in the **Federal Register**, in accordance with EPA's requirements and CEQ regulations (40 CFR § 1506.10).

(f) [Reserved]

(g) *Public information meetings.* The Agency will hold at least one public information meeting near the project site to discuss and receive comments on the draft environmental impact statement. The meeting will be scheduled no sooner than 15 days after the release of the draft environmental impact statement. It will be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification will be the same as described in paragraph (b)(2) of this section. The meeting will be chaired by the Agency and will be fully recorded so that a transcript can be produced. The applicant will be requested to assist the Agency in holding the meeting and will pay for all costs associated with the meeting or portion of the meeting related to the applicant's project. To the extent possible, this meeting will be combined with public meetings required by other involved agencies.

(h) *Response to comments.* The Agency will respond to written comments on the draft environmental impact statement as required by CEQ (40 CFR § 1503.4). The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(i) [Reserved]

(j) *Contracting for preparation of an environmental impact statement.* At the Agency's discretion, draft and final environmental impact statements will be prepared by a third party consultant selected by the Agency and funded by the applicant.

§ 1940.924 Record of decision.

Upon completion of the review period for a final environmental impact statement, the Agency will publish a concise record of decision in the

Federal Register (40 CFR 1505.2 and 1506.10).

(a) Coincident with the record of decision's appearance in the **Federal Register**, a notice of the record of decision's availability will be published within the project area in the same manner as described in paragraph (b)(2) of this section.

(b) The environmental impact statement is not complete until a record of decision has been issued and published by the Agency.

§ 1940.925 Use of completed final environmental impact statement.

The final environmental impact statement will be coequally considered along with every other major factor in the Agency's decision on the proposed action.

§ 1940.926 Supplements to environmental impact statements.

Supplements to either a draft or final environmental impact statement will be prepared, circulated, and published by the Agency in the same manner as draft and final environmental impact statements, except for the scoping process which is optional. Applicants will assist in the preparation of supplement environmental impact statements, as determined by the Agency, including assumption of associated costs.

(a) Supplements to either draft or final environmental impact statements will be prepared if:

(1) A substantial change occurs in the proposed action and such change is relevant to the environmental impacts previously considered; and

(2) Significant new circumstances or information pertaining to the proposed action arise which are relevant to environmental concerns and germane to the proposed action or its impacts.

(b) If the Agency determines that the changes or new circumstances do not require the preparation of a supplemental environmental impact statement, the Agency will complete a Class II assessment which will document the reasons for this decision.

(c) If there is a need for expedited or special procedures in the completion of a supplement, CEQ approval for the alternative procedures must first be obtained by the Agency.

(d) The supplement will be used in the Agency's decisionmaking process in the same manner as an initial environmental impact statement.

§§ 1940.927–1940.930 [Reserved]

§ 1940.931 State and local environmental procedures.

The Agency will cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local environmental requirements, unless the agencies are specifically barred from doing so by some other law.

(a) Applicants and State and local agencies that expect to request Agency assistance for specific proposed actions will contact the Agency at the earliest possible date to determine if joint assessments can be effectively developed. Conditions for joint preparation of such documents are below:

(1) The Agency's applicant for financial assistance is also receiving financial, technical, or other assistance from a State or local agency which has jurisdiction and the responsibility to complete an environmental review for the proposed action;

(2) The Agency and the State or local agency will be joint lead agencies. When State laws or local ordinances have environmental requirements in addition to, but not in conflict with, those of the Agency, the Agency will cooperate in fulfilling these requirements, and those of the Agency so that one document will comply with all applicable State and Federal laws;

(3) The Agency and the State or local agency shall jointly: conduct planning and research, establish the scope and content of the environmental review document, participate in the analysis and evaluation of the environmental issues (including alternatives and mitigation), and prepare the appropriate draft or final environmental review documents;

(4) The Agency and the State or local agency shall jointly provide for public involvement as specified in this subpart, plus any additional requirements of the State or local agency;

(5) The Agency and the State or local agency shall jointly concur in the evaluation of the environmental issues and execute either the determinations of compliance and FONSI for the environmental assessment or the Record of Decision for an environmental impact statement, as appropriate.

(b) Many states have environmental laws similar to NEPA, generically referred to as state environmental policy acts. The completion of an environmental impact statement or environmental assessment under the requirements of a state environmental policy act does not eliminate the requirement for the Agency to prepare

its own Federal environmental impact statement or environmental assessment. In the event that the environmental document is not jointly prepared as described in paragraph (a) of this section, but is prepared under the requirements of a state environmental policy act, the finished document will be evaluated by the Agency as reference or supporting material for the Agency's own assessment to minimize duplication of effort.

(1)–(2) [Reserved]

§§ 1940.932–1940.933 [Reserved]

§ 1940.934 Adoption.

(a) *Adoption of an environmental assessment.* (1) The Agency may, under specific conditions, adopt an environmental assessment, or portion thereof, after completion by another Federal agency.

(i)–(iv) [Reserved]

(2) The Agency will supplement the assessment, with the cooperation of the applicant as necessary, to meet the requirements of this subpart and CEQ regulations.

(b) *Adoption of an environmental impact statement.*

(1) The Agency may, under specific conditions, adopt an environmental impact statement, or portion thereof, after completion by another Federal agency.

(i)–(v) [Reserved]

(2) If there are differences between the original environmental impact statement and the proposed action or current environmental conditions, the Agency, with the assistance of the applicant, will update and supplement the environmental impact statement to cover these differences and then recirculate the document as a “draft” environmental impact statement with the public so notified.

(3)–(4) [Reserved]

§ 1940.935 Intermediary financial assistance programs.

Except as modified in this section, the provisions of this subpart apply to the intermediary's application for assistance and to all third party applications for assistance from the intermediary when that assistance is to be provided with Agency funds. Intermediary funds, when composed of repayments by third parties to the intermediary, are not considered federal assistance for NEPA purposes when relented by the intermediary.

(a) *General.* Prospective intermediaries and third parties must consider the potential environmental impacts of their proposed actions at the earliest planning stages and develop

plans to minimize the potential for adverse impacts to the environment.

(b) *Planning and technical assistance.* Refer to §§ 1940.913(d)(3) and 1940.914(d)(4) for planning and technical assistance requirements.

(c) *Applications for financial assistance to third parties.* (1) The prospective intermediary must provide a completed “Request For Environmental Information” or equivalent document as part of its proposed plan for financial assistance to third parties, except as provided in paragraph (c)(2) of this section. The Agency will review the plan, the completed “Request For Environmental Information,” and supporting material and will initiate a Class II assessment for the proposed action, except as provided in paragraph (c)(2) of this section. This Class II environmental assessment will discuss the important environmental resources in the proposed service area, the potential for cumulative impact from the activities proposed by the plan and the measures which may be employed to avoid or mitigate such impact. Public notification requirements do not apply to this environmental assessment, because neither the completion of this environmental assessment, nor the approval of this type of application is an Agency commitment to the use of funds for any identified third party projects. Should the proposal be approved or the Agency otherwise make a commitment of resources to the intermediary, each third party proposal to be assisted will undergo the appropriate environmental review and public notification requirements, as specified in this subpart, before the Agency concurs in intermediary assistance to the third party.

(2) When the intermediary's plan specifically identifies one or more third parties who will be the sole recipient of the intermediary's financial assistance program, the Agency may forego the Class II environmental assessment described in paragraph (c)(1) of this section and proceed directly to preparation of the appropriate environmental review for each of the identified third parties. If there is some question whether third parties listed in the plan will become actual recipients of assistance under the plan, completion of the environmental review for those third parties, including preparation of the “Request for Environmental Information” for each, may be postponed until the intermediary receives definite proposals from those third parties.

(3) The intermediary will provide the Agency with a properly completed

“Request For Environmental Information” for each third party proposal classified as a Class I or Class II action no later than when the intermediary requests Agency concurrence in the third party proposal.

(4) The intermediary will inform the Agency if there is a change in the plan for financial assistance subsequent to completion of the Class II environmental assessment or if there is a change in a third party proposal subsequent to completion of the appropriate environmental review for that proposal. The Agency will then modify the existing environmental assessment, pursuant to § 1940.922, or complete a new assessment, as appropriate.

(d) *Housing Preservation Grant (HPG) Program.* The intermediary's request for an HPG will be subject to a Class I assessment. Third party requests for assistance from the intermediary will be subject to the appropriate level of environmental review as described in 7 CFR, part 1944, subpart N, which contains additional environmental guidance unique to the HPG program.

§ 1940.936 [Reserved]

§ 1940.937 Management, lease, and disposition of Agency-owned property.

(a) [Reserved]

(b) *Completion of an environmental review.* (1) The Agency will complete the appropriate level of environmental review before lease or disposal of Agency-owned property and prior to any repairs or maintenance activities on such property. Normally lease or disposal of Agency-owned property is considered a categorical exclusion. However, a Class I or Class II assessment, or an environmental impact statement, as appropriate, will be completed when:

(i) The proposed transaction is controversial for environmental reasons; or

(ii) The Agency has reason to believe the transaction would result in a specified change in use of real property within the reasonably foreseeable future; or

(iii) The property contains one or more of five specific environmental resources. Each of these five resources impose special requirements on the management, lease, and disposal of Agency-owned property:

(A) All or part of the property is located within the Coastal Barriers Resource System;

(B) All or part of the property is listed or eligible for listing on the Natural Register of Historic Places;

(C) Property contains Native American human remains and cultural items;

(D) Property is located within a special flood or mudslide hazard area; or

(E) Property contains wetlands.

(2) The requirements for public involvement in § 1940.911 are fully applicable to the Class I and Class II environmental assessments completed in accordance with paragraph (b)(1) of this section.

(c)–(e) [Reserved]

§ 1940.938 Emergencies.

For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety. In accordance with CEQ regulations (40 CFR § 1506.11), alternative arrangements are limited to actions necessary to control the immediate impacts of the emergency. All other actions remain subject to NEPA review.

(a) *Action requiring an environmental impact statement.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with the Office of General Counsel and with the CEQ about alternative arrangements before the proposed action is taken.

(b) [Reserved]

§§ 1940.939–1940.940 [Reserved]

§ 1940.941 Environmental risk management.

(a) *Purpose.* (1) This section implements the requirements of the statutes listed below and contains Agency policies and procedures for response to the release of hazardous substances and petroleum products and for management of hazardous wastes:

(i) Clean Air Act (CAA), (42 U.S.C. 7401 *et seq.*);

(ii) Clean Water Act (CWA), (33 U.S.C. 1251 *et seq.*);

(iii) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), (42 U.S.C. 9601 *et seq.*);

(iv) Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), (7 U.S.C. 136 *et seq.*);

(v) Marine Protection, Research, and Sanctuaries Act (MPRSA), (42 U.S.C. 1411 *et seq.*);

(vi) Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6901 *et seq.*);

(vii) Safe Drinking Water Act (SDWA), (42 U.S.C. 300h);

(viii) Toxic Substances Control Act (TSCA), (15 U.S.C. 2601 *et seq.*).

(2) Implementing regulations, specific to each of the above laws, are applicable to Agency activities but will not be repeated in this subpart, except for clarification.

(3) This section applies to all Agency program and administrative actions as described in § 1940.901.

(b) *Objectives.* The objectives of this section are:

(1) To ensure that the applicant, guaranteed lender, and intermediary comply with Federal, State, and local laws regarding the release of hazardous substances and petroleum products and the management of hazardous wastes;

(2) To establish and incorporate into lending practices an environmental risk management program. A major component of this risk management program will be the performance of due diligence:

(i) To minimize adverse impacts to the security interests in real property caused by potential contamination from hazardous substances, hazardous wastes, and petroleum products; and

(ii) To establish a process to minimize liability under the laws regulating management of hazardous substances, hazardous wastes, and petroleum products.

(c) *Definitions.* The definitions contained in § 1940.904 are applicable to this section. The following definitions are applicable to this section.

Agency official. The Agency employee with primary responsibility for processing or servicing the loan, grant, or contract in question. The Agency official may or may not be the Agency approval official.

American Society for Testing and Materials (ASTM). A developer and provider of voluntary consensus standards, related to technical information and services having internationally recognized quality and applicability that: promote public health and safety, and the overall quality of life; contribute to the reliability of materials, products, systems and services; and facilitate national, regional, and international commerce.

Appropriate environmental regulatory authority. Unless otherwise stated, refers to the Federal, State, or local regulatory agency granted oversight authority for management of one or more hazardous substances, hazardous wastes, or petroleum products.

ASTM. American Society for Testing and Materials.

Due diligence. The process of inquiring into the environmental condition of real estate, in the context

of a real estate transaction, to determine the potential for contamination from release of hazardous substances, hazardous wastes, and petroleum products, and to determine what impact such contamination may have on the regulatory status and the security value of the property.

Emergency response action. An immediate action required to temporarily contain and stabilize releases or threatened releases of hazardous substances, hazardous wastes, and petroleum products that pose imminent and substantial threats to human health and the environment on property in which the Agency has a security interest.

Environmental audit. An independent investigative process to determine if the processes, equipment, and operations of an existing facility are in compliance with applicable environmental laws and regulations. The term “environmental audit” should not be used to describe the due diligence process, but an environmental audit may be conducted in conjunction with due diligence.

Environmental professional. A non-Agency professional, who possesses the technical and scientific credentials necessary to conduct due diligence evaluations and, from the information gathered by such evaluations, has the ability to develop conclusions regarding potential environmental contamination. In addition, an environmental professional must be able to provide technical oversight, direction, and management of response actions pursuant to Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act. This term also refers to a professional with the skills necessary to perform environmental audits.

Facility. In relation to the definition of a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act, is defined as any building, structure, installation, equipment, pipe or pipeline, storage container, motor vehicle, rolling stock, or aircraft; or any site or area where a hazardous substance has been deposited, stored, disposed of, or otherwise comes to be located.

Hazardous substance. Is identified as:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Clean Water Act;

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of Comprehensive Environmental Response, Compensation, and Liability Act;

(3) Any hazardous waste having characteristics identified under or listed pursuant to section 3001 of the Resource Conservation and Recovery Act;

(4) Any toxic pollutant listed under section 307(a) of the Clean Water Act;

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act; and

(6) Any imminently hazardous chemical substance or mixture with respect to which the U.S. Environmental Protection Agency Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

Hazardous waste. This is defined as a solid waste, or a combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed. Refer to 40 CFR 261.3 for the regulatory definition of a hazardous waste and to 40 CFR 261.4 for waste materials excluded from the definition of hazardous waste.

Petroleum products (and their derivatives). Petroleum products are not, by definition, a hazardous substance. Petroleum products include crude oil or any fraction thereof which is liquid at ambient conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

Potentially responsible party (PRP). See the Comprehensive Environmental Response, Compensation, and Liability Act:

(1) Current owner, operator, or owner and operator, of a facility from where there is a release or a threatened release of a hazardous substance (whether or not they disposed of hazardous substances during their ownership). See definition for "facility."

(2) Prior owner, operator, or owner and operator, of a facility, if they disposed of hazardous substances during ownership or acquired actual knowledge of a release or threatened release during ownership and subsequently transferred ownership without disclosure of the knowledge to the purchaser.

(3) Transporters who brought hazardous substances to a facility selected by them.

(4) Generators and other owners or possessors of the hazardous substances who arranged for disposal or treatment.

Release. A release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,

escaping, leaching, dumping, or disposing into the environment including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substances. This definition excludes:

(1) Releases which result in exposure to persons solely within a workplace; and

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

Response action. All investigative and remedial activities related to a resolution of an environmental threat or contamination caused by a release or disposal of hazardous substances, hazardous wastes, or petroleum products.

Safe. For the purposes of human health and safety with respect to hazardous substances, hazardous wastes, and petroleum products, the level of safety acceptable to the Agency will be that level required or designated by the appropriate environmental regulatory authority as the minimum "safe" level for the contaminant of concern.

Underground storage tank (UST). A UST is a tank or combination of tanks and any connected underground piping that has at least ten percent of its combined volume underground. For the purposes of this section, regulated USTs are those subject to federal regulation under the Resource Conservation and Recovery Act; unregulated USTs are those not subject to the installation, monitoring, and notification standards of the Resource Conservation and Recovery Act. Both regulated and unregulated USTs may be further subject to State and local requirements. Unregulated USTs include:

(1) Farm and residential USTs with a capacity of less than 1,100 gallons used for storing motor fuel for non-commercial purposes;

(2) USTs (of any size) used for storing heating oil for consumption on the premises where stored;

(3) Other types of tank systems listed in 40 CFR § 280.12, such as: septic tanks; pipeline facilities; surface impoundments, pit, pond, or lagoons; stormwater or wastewater collection systems; flow-through process tanks; liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and storage tanks situated in an underground area (i.e., basement, cellar, mineshaft, etc.) if the tank is situated on or above the surface of the floor.

UST. Underground storage tank.

(d) Responsibilities.—(1) *Agency official.* The Agency official is responsible for ensuring compliance with the requirements of this section, ensuring that adequate training and guidance on the requirements of this section is provided to guaranteed lenders and intermediaries, and coordinating activities with the State Environmental Coordinator.

(2) *Applicants.* Applicants are responsible for identifying and complying with all Federal, State, and local laws regarding the release of hazardous substances and petroleum products and the management of hazardous wastes that are applicable to their financial operations or business interests. Applicants will maintain their operations in an environmentally sound manner and not place the lender's security interest at risk.

(3) *Contract or fee appraiser.* Contract or fee appraisers are responsible for reporting to the Agency, guaranteed lender or intermediary, as appropriate, any potential contamination from hazardous substances, hazardous wastes, and petroleum products of which they become aware, either through disclosure by interested parties, normal observations, or research conducted during an appraisal assignment. Appraisals will be based on all available information, including the due diligence report.

(4) *Environmental professional.* A qualified environmental professional:

(i) Will perform all Phase I and Phase II Environmental Site Assessments, all analytical procedures (including sampling and testing activities) related to any environmental media, response or corrective actions, and environmental audits;

(ii) When requested, will evaluate remedial options and provide a cost estimate for response actions on subject property as part of the due diligence report, which may then be used by the Agency, appraisers, guaranteed lenders, or intermediaries, as appropriate, to develop risk analyses and to make security value determinations in loan processing and servicing decisions;

(iii) Will be responsible for obtaining and analyzing environmental samples in accordance with proper health and safety procedures required by 29 CFR 1910.120 "Hazardous Waste Operations and Emergency Response" and the most current sampling and laboratory protocols promulgated by the appropriate environmental regulatory authorities.

(5) *Guaranteed lender and intermediary.* The guaranteed lender and the intermediary are responsible for ensuring compliance with all Federal,

State, and local laws regarding management of hazardous substances, hazardous wastes, and petroleum products. Noncompliance may affect the Agency's payment of loss claims under the guarantee. The guaranteed lender and the intermediary will:

(i) Assist the Agency in obtaining any information needed by the Agency to make a determination of applicant compliance with the requirements of this section and with applicable Federal, State, and local laws relative to management of hazardous substances, hazardous wastes, and petroleum products;

(ii) Ensure that their contract and fee appraisers comply with the responsibilities outlined in paragraph (d)(3) of this section;

(iii) Support the general standards and implementation requirements of paragraphs (e) and (f) of this section in conjunction with processing and servicing requirements described in paragraphs (g) and (h) of this section;

(iv) Ensure that due diligence is performed in conjunction with processing and servicing actions as prescribed in this section;

(v) Ensure that mitigation measures and other compliance conditions required by the Agency and contained in loan and grant documents are implemented;

(vi) Consult with the Agency, in a timely manner, on any applicant problem relative to the management of hazardous substances, hazardous wastes, and petroleum products;

(vii) Promptly notify appropriate regulatory authorities and the Agency with respect to a release or threatened release of hazardous substances, hazardous wastes, and petroleum products on property in which the Agency has a security interest; and

(viii) Maintain copies of the due diligence report, environmental audit, UST data, and other relevant information, as applicable, in their case files and provide the Agency with copies of such information.

(e) *General standards.* (1) The guaranteed lender or the intermediary, as appropriate, will incorporate into their lending practices the environmental risk management program described in this section. The purpose of this risk management program is:

(i) To make a reasonable and prudent attempt to minimize liability, and

(ii) To evaluate the effect of potential contamination from hazardous wastes and from the release of hazardous substances and petroleum products on the security value of real property and

to maximize recovery on such affected security property.

(2) The guaranteed lender or the intermediary, as appropriate, will require applicants to comply with all environmental laws related to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products.

(3) The Agency will not provide additional financial assistance or other program benefits to applicants who fail to comply with environmental laws or with compliance conditions contained in the loan and grant documents relative to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products, unless that assistance will be used to achieve compliance.

(4) The guaranteed lender or the intermediary, as appropriate, will provide complete and timely disclosure to appropriate environmental regulatory authorities of information concerning contamination or potential contamination of any property by hazardous substances, hazardous wastes, and petroleum products discovered during processing or servicing actions under all programs.

(5)–(8) [Reserved]

(f) *Implementation of general standards.* This paragraph describes how the general standards of paragraph (e) of this section will be implemented. For more explicit guidance on processing and servicing actions for specific programs, refer to paragraphs (g) and (h) of this section.

(1) *Due diligence.* (i) A major component of the environmental risk management program is the conduct of due diligence. Unless otherwise modified by this section, the guaranteed lender or intermediary, as appropriate, will conduct due diligence in conjunction with the appraisal:

(A) Before the commitment of Agency resources, as described in § 1940.910(e), when the proposed security involves real property; and

(B) Before a decision on any loan servicing activity by guaranteed lender or intermediary which could foreseeably lead to acquisition of real property by the Agency, guaranteed lender, or intermediary.

(ii) The acceptable standard of evidence of due diligence is the most current version of the American Society of Testing and Materials Standard Practices or Guide, information on which is available in any Rural Development Office:

(A) *ASTM Standard Practice for Environmental Site Assessments: Transaction Screen Process* (Designation: E 1528). The guaranteed

lender and the intermediary are responsible for completing the Transaction Screen Questionnaire for guaranteed loans and loans or grants to third parties, respectively. A Phase I Environmental Site Assessment will be performed if the results of the Transaction Screen Questionnaire are inconclusive.

(B) *ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (Designation: E 1527). All Phase I Environmental Site Assessments will be performed by environmental professionals. The guaranteed lender and the intermediary are responsible for obtaining the Phase I Environmental Site Assessments for guaranteed loans and loans or grants to third parties, respectively.

(C) *ASTM Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process* (Designation: E 1903–97). Responsibility for completion of Phase II Environmental Site Assessments is the same as for Phase I Environmental Site Assessments.

(iii) Guaranteed lenders and intermediaries will incorporate the American Society for Testing and Materials standards into their processing and servicing procedures or use an equivalent process of due diligence approved by the State Environmental Coordinator in consultation with the Regional Office of General Counsel.

(2) *Applicant compliance.* (i) *Documents.* All loan and grant agreements will include a provision for compliance with any measures required as conditions of financial assistance and with all applicable environmental laws relative to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products.

(ii) *Noncompliance.* Applicants who do not comply with environmental laws related to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products or with the environmental compliance conditions set forth by the Agency or the guaranteed lender in loan and grant documents may be excluded from further Agency benefits under the debarment and suspension procedures found at 7 CFR part 3017 or through procedures provided by other regulations.

(iii) *Environmental audits.* With the exception of the Single Family Housing Programs authorized by sections 502, 504, 509, 523, and 524 of the Housing Act of 1949, and when the Agency

determines that it is needed, the Agency will require an applicant to provide an environmental audit before making a decision on processing or servicing actions or periodically to monitor an applicant's on-going environmental compliance activities. Environmental professionals, familiar with the type of facility being investigated, will perform these audits to:

(A) Determine compliance status with environmental laws;

(B) Evaluate environmental management practices, such as storage, transportation, and disposal of hazardous wastes;

(C) Identify environmental risks and liabilities, including those attributed to past practices, particularly as they may adversely affect the financial viability of the applicant's facility; and

(D) Monitor past and present environmental compliance activity.

(g) *Processing activities.* (1) *General requirements.* These requirements apply to the processing of all direct and guaranteed loans and grants, including loans and grants made to a third party by an intermediary using Agency funds. Additional requirements for housing actions and business and essential community facility actions are outlined in paragraphs (g)(2) and (3) of this section, respectively.

(i) *Due diligence.* If due diligence results in a finding that a release of hazardous substances, hazardous wastes, or petroleum products is present on the property and may adversely affect security values or the intended use of the property, the guaranteed lender or intermediary, as appropriate, will either:

(A) Require a pre-closing cleanup conducted and paid for by the owner or seller of the property;

(B) Require different security;

(C) Parcel-out the contaminated portion of the property and forgo accepting that portion as security; or

(D) Knowingly accept the contaminated property as security. Acceptance of contaminated property as security requires the prior concurrence of the Agency.

(ii) *USTs.* UST closure, including removal and corrective action or closure in place, will be undertaken by the seller unless, for good cause, the Agency decides otherwise. When replacing a UST, aboveground storage tanks will be installed whenever practicable to facilitate maintenance and leak detection.

(2) *Housing actions.* In addition to the general requirements of paragraph (g)(1) of this section, the following conditions apply to the processing of all direct and guaranteed housing actions, regardless

of the type of loan or grant program which finances the action. A unit is equivalent to housing for a single family.

(i) *Due diligence and housing actions.*—(A) Existing structures (multiple and single unit) and new construction of single unit housing. Due diligence will be performed by the guaranteed lender or intermediary, as appropriate, if:

(1) An appraiser reports to the guaranteed lender or intermediary, as appropriate, that potential contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or encountered through research or interviews with individuals knowledgeable about the property; or

(2) The guaranteed lender or intermediary, as appropriate, becomes aware of possible contamination through some means other than the appraiser's report.

(B) *New construction of multiple unit housing and subdivisions.* Due diligence will be performed by the guaranteed lender or intermediary, as appropriate, for applications for new construction for multiple unit housing actions and for applications relating to the development of a subdivision, including planning and technical assistance, land purchase, and site development. Due diligence will also be performed for preapproval of subdivisions, if such preapproval is required by program regulations.

(ii) *USTs and housing actions.* For all housing actions, if an appraiser reports the presence or suspected presence of a UST, or if the Agency, guaranteed lender, or intermediary, as appropriate, becomes aware of a possible UST through a due diligence report or other some other means, the following conditions apply:

(A) When a UST is not essential to the operation of the housing project, the UST will be closed as a condition of financial assistance. Closure is usually through removal or by filling the UST in place with inert material. Closure must follow the applicable requirements of the appropriate regulatory authority, if any, and the applicant must provide the Agency, guaranteed lender, or intermediary, as appropriate, with appropriate UST closure documentation before loan closing or grant award.

(B) When a UST is essential to the operation of the housing project and the UST is subject to regulatory requirements, the applicant will provide the Agency, guaranteed lender, or intermediary, as appropriate, with evidence that the UST is in compliance with those requirements before loan closing or grant award.

(C) When a UST is essential to the operation of the housing project and the UST is not subject to regulatory requirements:

(1) Before loan closing or grant award, the applicant will provide the Agency, guaranteed lender, or intermediary, as appropriate, with a signed, written statement from the seller that, after investigation by the seller, the UST is in good working order, without leaks. The statement will include all available tank specifications, including but not limited to age, tank composition, installation method, and warranty.

(2) If, in spite of the warranty, the UST's age and reliability are still in question, the Agency, guaranteed lender, or intermediary, as appropriate, shall request that either a tightness test be performed or that the UST be replaced before loan closing or grant award.

(3) *Business and essential community facility actions.* In addition to the general requirements of paragraph (g)(1) of this section, the following conditions apply to the processing of all direct and guaranteed business and essential community facility actions regardless of the type of loan or grant program which finances the action:

(i) *Due Diligence and business and essential community facility actions.* Due diligence will be completed by the guaranteed lender or intermediary, as appropriate, for all applications where real property will be taken as security.

(ii) *USTs and business and essential community facility actions.* (A) When a UST is not essential to the operation of the facility, the UST will be removed as a condition of financial assistance. Removal must follow the applicable requirements of the appropriate regulatory authority, if any, and the applicant must provide the Agency, guaranteed lender, or intermediary, as appropriate, with appropriate UST closure documentation before loan closing or grant award.

(B) When a UST is essential to the operation of a facility and the UST is subject to regulatory requirements, the applicant will provide the Agency, guaranteed lender, or intermediary, as appropriate, with evidence that the UST is in compliance with those requirements before loan closing or grant award.

(C) When a UST is essential to the operation of a facility and the UST is not subject to regulatory requirements:

(1) Before loan closing or grant award, the applicant will provide the Agency, guaranteed lender, or intermediary, as appropriate, with a signed, written statement from the seller, that after investigation by the seller, the UST is in

good working order, without leaks. The statement will include all available tank specifications, including but not limited to age, tank composition, installation method, warranty, and the results of a tightness test unless it is more cost-effective to proceed with replacement of the UST.

(2) Tightness tests must comply with the appropriate regulatory standards. USTs which fail tightness tests must be brought into compliance or replaced. If the UST is replaced, appropriate closure documentation on the old UST must be provided before loan closing or grant award.

(iii) *Environmental audits.* Applicants (including applicants applying for additional federal financial assistance through the Agency, guaranteed lender, or intermediary) who operate facilities that generate hazardous wastes in quantities equal to or greater than 100 kilograms in a calendar month (small quantity generators and larger) will agree in the loan agreement to provide the Agency, guaranteed lender, or intermediary, as appropriate, as a condition of financial assistance, an annual audit prepared by an independent environmental professional or consultant. The consultant must be familiar with the type of operation they are auditing. To minimize the cost of the audit, consultants may limit their evaluation to those activities, outlined in paragraph (f)(2)(iii) of this section, that have the potential for adverse impacts to human health and the environment and to the security value of the property.

(h) *Servicing activities.* (1) *General requirements.* These requirements apply to the servicing of all direct and guaranteed loans and grants, including loans and grants made to a third party by an intermediary using Agency funds. Additional requirements for guaranteed loans are outlined in paragraph (h)(2) of this section.

(i) *Due diligence.* The guaranteed lender or intermediary, as appropriate, will conduct due diligence in conjunction with the appraisal for all loan servicing actions which require a determination of security value or which could lead to acquisition of real property by the guaranteed lender, intermediary, or Agency. For the Guaranteed Single Family Housing Program, due diligence will only be performed by the guaranteed lender when:

(A) An appraiser reports that potential contamination from hazardous substances, hazardous wastes, or petroleum products has been observed on the property or encountered through

research or interviews with individuals knowledgeable about the property; or

(B) The Agency or the guaranteed lender becomes aware of possible contamination through some means other than the appraiser's report.

(ii) *Monitoring compliance.* The guaranteed lender or intermediary, as appropriate, will monitor applicant compliance with applicable Federal, State, and local laws relating to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products and with any compliance conditions contained in loan and grant documents.

(A) The frequency and extent of monitoring will be appropriate to the degree of environmental risk and liability involved.

(B) Guaranteed lenders and intermediaries will promptly inform the Agency official of problems or potential problems with applicant compliance and will cooperate fully with the Agency in developing appropriate resolutions.

(iii) *Noncompliance.* If it is discovered that an applicant has failed to comply with applicable Federal, State, and local laws relating to the use, transportation, storage, and disposal of hazardous substances, hazardous wastes, and petroleum products or with the compliance conditions contained in loan and grant documents, the guaranteed lender or intermediary, as appropriate, will notify the applicant of the need to take immediate corrective action and take any additional actions necessary to assure compliance.

(iv) *Release or threatened release.* If a release or threatened release of hazardous substances, hazardous wastes, or petroleum products is discovered on an applicant's property, the guaranteed lender or intermediary, as appropriate, will promptly notify the applicant in writing that immediate corrective action must be taken, consistent with appropriate regulatory authority requirements and take any additional actions necessary to assure compliance with the notice.

(v) *Bankruptcy.* If an independent appraisal is necessary in bankruptcy proceedings, due diligence will be conducted in conjunction with that appraisal.

(2) *Guaranteed loans.* In addition to the general requirements of paragraph (h)(1) of this section, the following conditions apply to the servicing of all guaranteed loans:

(i) *Release of security property by lender.* If contamination from release of hazardous substances, hazardous wastes, or petroleum products contributes to a guaranteed lender's

request to release security property, the request to the Agency will include all available due diligence documentation furnished by the guaranteed lender to support and justify the request.

(ii) *Accepting title to property from guaranteed lenders.* If the due diligence documentation provided by the guaranteed lender shows that contamination is present and that the cost of remedial or corrective response actions plus the amount of the debt exceeds the security value, the Agency may choose not to accept title to the property.

(iii) *Payment of loss claims.* If there is a loss claim due to contamination from a release of hazardous substances, hazardous wastes, or petroleum products, the Agency shall not finalize loss claims until the guaranteed lender has sold the property.

(3)–(4) [Reserved]

(i) *Single Family Housing Programs waiver.*

An Agency official may request and the Administrator or designee may waive, on a case-by-case basis, any of the environmental risk management requirements of § 1940.941 applicable to Single Family Housing Programs authorized by sections 502, 504, 509, 523, and 524 of the Housing Act of 1949, provided the Agency determines that application of the requirement would adversely affect the Government's interest and that the proposed waiver is consistent with applicable statutes.

§ 1940.942 Lead-based paints.

The provisions of 24 CFR, part 35, subparts A, B, C, D, J, and R will be applicable to all Agency programs involving housing.

§ 1940.943 Indoor air pollutants.

All Agency financially assisted projects will be in compliance with State or local laws, ordinances, codes, or regulations governing indoor air pollution.

§§ 1940.944–1940.948 [Reserved]

§ 1940.949 Appeals.

An applicant that is directly and adversely affected by a program administrative decision made by the Agency under this subpart may appeal that decision under the provisions of 7 CFR part 11 and subpart B of part 1900 of this chapter. However, the National Appeals Staff does not have the authority to change or waive applicable laws or regulations. A program administrative decision based on clear and objective statutory or regulatory requirements is not appealable but can be reviewed.

§ 1940.950 [Reserved]

Dated: August 13, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

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